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MANAGEMENT AND RECONCILIATION OF INDIAN TRUST FUND ACCOUNTS

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Management and Reconciliation of In...

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ORE THE

TASK FORCE ON INDIAN TRUST FUND MANAGEMENT

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

THE MANAGEMENT OF INDIAN TRUST FUNDS, THIS GOVERNMENT'S TRUST RESPONSIBILITY TO NATIVE AMERICANS, AND AN AUDIT OR RECONCILIATION OF THESE TRUST FUND ACCOUNTS

JUNE 18, 1996—WASHINGTON, DC

Serial No. 104–80

Printed for the use of the Committee on Resources

DEPOSITORY

OCT 18 1996

U.S. GOVERNMENT PRINTING OFFICE

26–403 cc WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053430-5

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MANAGEMENT AND RECONCILIATION OF INDIAN TRUST FUND ACCOUNTS

TUESDAY, JUNE 18, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON TASK FORCE OF INDIAN TRUST FUND MANAGEMENT, COMMITTEE ON RESOURCES

Washington, DC.

The Task Force met, pursuant to call, at 10:06 a.m., in room 1324, Longworth Building, Hon. J.D. Hayworth [chairman of the Task Force] presiding.

STATEMENT OF HON. J.D. HAYWORTH, A U.S. REPRESENTATIVE FROM ARIZONA

Mr. HAYWORTH. Good morning, ladies and gentlemen. Today we begin our hearings on the management of Indian trust funds. We read press accounts of what sounds like a gigantic breach of this government's trust responsibility to Native Americans. We have heard about an audit or reconciliation of these trust fund accounts which cost a staggering $21 million.

Now we have learned that this $21 million audit was not really an audit at all. We hear that the $21 million expenditure did not even reconcile those accounts. We hear that only a small portion of those accounts were even examined. We hear that $2.4 billion, let me emphasize the word billion here, $2.4 billion in account transactions cannot be reconciled.

I want to find out how this came about, and I want to find out what is being done to straighten it out. In a broader sense, I would hope that we could reconcile the disparity between the rhetoric and the reality of the BIA, or Bureau of Indian Affairs.

One of my Navajo constituents says BIA stands for Bossing Indians Around, and in the wake of this money apparently lost or unaccounted for, BIA has also come to mean Billions In Arrears. So today is a learning day for all of us. We are going to hear from the special trustee, who is going to start with the basics and explain to us what kind of accounts they have, how many accounts exist, how the operation works, and other details of importance.

The special trustee will also tell us what he believes must be done to straighten things out once and for all. Then we will hear from Eric Davenport, the chairman of the Intertribal Monitoring Association for Indian Trust Funds, who will give us his perspective on the management of Indian trust funds. Elouise Cobell, the Chair of the Special Trustees Advisory Board, will also bring us her perspective on all of this.

Then we will hear from John Echohawk, the Director of the Native Rights Fund. He will explain to us the reason for the recent suit which has been initiated against the Secretaries of Interior and Treasury concerning the ongoing operation of Indian trust fund accounts. Finally, we will hear from Linda Calbom and Gail Fischer of the General Accounting Office, who has been studying this disaster in Federal account management for years.

You will note that one of the GAO's many reports is in your folders. At this point I am privileged to yield to my colleague and ranking minority member, the gentleman from Michigan, Mr. Kildee, for his opening statement.

STATEMENT OF HON. DALE KILDEE, A U.S. REPRESENTATIVE FROM MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman. I also would like to submit opening statements on behalf of Mr. Miller and Mr. Richardson.

Mr. HAYWORTH. Without objection.

Mr. KILDEE. Mr. Chairman, I am very grateful to you for calling this hearing this morning. I think people will find out that while you and I on certain issues may have some areas of disagreement that one thing we do agree upon is justice for the American Indians and you certainly have already proved that in your tenure here in the Congress of the United States.

As we are all aware, the problems with the management of the Indian trust funds has been around almost as long as the trust funds themselves. I understand the first General Office Accounting report pointing out unreconciled balances within BIA was in the 1920's. At that time I believe there was some $40,000 that could not be accounted for. Unfortunately now that amount is in the billions. Over the past couple of years this trend has somewhat begun to turn around, but there is much work to be done.

Last Congress, this Committee passed the American Indian Trust Fund Management Reform Act of 1994. The purpose of this Act was to give tribes more access to their trust fund accounts, to require specific actions of the Secretary in carrying out his trust fund management responsibilities, and to require that the Department of Interior report to the Committee on the Reconciliation Project undertaken by the Department.

The Act also established a special trustee for trust funds to coordinate and implement better management of these funds. I hope we will hear this morning how that Act is being implemented. Before we hear from our witnesses this morning, I believe I would be remiss if I did not mention the person without whose perseverance and dogged determination we probably would not be here today.

As Chairman of the Committee on Government Operations SubCommittee on Environment, Energy and Natural Resources, our former colleague, Mike Synar, of Oklahoma, forced light onto the problems of mismanagement of the Indian trust funds. For five years Mike held hearings, conducted investigations, and called for GAO and Inspector General reports on the problems.

Consistently, he stopped any member with tribal constituents to talk about what he was learning of the problems and the need for attention to them. The report released from his subCommittee re-

mains essential background material for all involved with this issue. Mike left Congress and this world far too soon, but I am proud that this Task Force continues the work he began. I thank all the witnesses here this morning. Thank you, Mr. Chairman.

.[Statements of Members follow:]

STATEMENT OF HON. BILL RICHARDSON, A U.S. REPRESENTATIVE FROM NEW MEXICO

I thank our Task Force Chairman, Mr. Hayworth, for conducting this hearing today to update us on where we are with the problems with the BIA's management of Indian trust funds. I wish I could believe we could solve all the BIA problems within our Congressional careers, but I fear none of us will be around long enough to reach that goal. We would do well to straighten out the long standing mess with the Indian trust funds.

Last Congress I was the author of the American Indian Trust Fund Management Reform Act of 1994. This Act required that the Secretary give periodic account statements to Indian account holders and give Tribes more access to their funds. The Act drew to a conclusion the five year, $21 million Reconciliation Project being conducted by the BIA and required that each Tribe receive a statement on the reconciliation of their accounts. We also established the position of Special Trustee for Indian Trust Funds and required that the position be filled with a financial management expert willing to come up with a plan to overhaul the current system. I look forward to hearing from Special Trustee Paul Homan as to his progress.

I see many familiar faces here this morning representing the Tribes, GAO, and the Department of the Interior and am pleased that so many are willing to continue the effort. The one face sadly missing from this hearing is that of my dear friend and former colleague, Mike Synar. Mike was the first in a long time to bring the problems of Indian trust fund management to the Congress' attention. He ignored those who said it was too boring and too complicated an issue for anyone to pay attention to. When Mike got excited about an issue and saw an injustice he wouldn't rest until he did all he could to right it. I was proud to work so closely with him on the Trust Fund Reform Act and if I know Mike, he is probably forcing St. Peter to reconcile his accounts right now.

Chairman Hayworth, I congratulate you on holding this hearing and look forward to working with you to continue to address the decades long problems with Indian trust fund management.

STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

I want to thank Chairman Hayworth for conducting this morning's hearing on the management of Indian trust funds by the Department of the Interior and the Federal Government. I appreciate your picking up the banner on this issue and agreeing to head up the Task Force on Indian Trust Funds. As one who has been working on these matters for several Congresses now, I can assure you the issues will confound, frustrate and challenge you. I am confident that your perspective and approach will bring us closer to solving these problems. I look forward to working with you in a bipartisan manner.

I see that we will hear from the Special Trustee for Indian Trust Funds, Paul Homan. This position was established as part of the American Indian Trust Fund Management Reform Act of 1994 passed by this Committee last Congress. I'm interested to see what progress Mr. Homan has made in addressing the policy and management problems within the Department. I expect that this hearing will update us to where we are now that the Reconciliation Project has been completed by the Department and Tribes have received statements on their accounts. Along with the Special Trustee, we will hear from GAO and plaintiffs in a recently filed suit on behalf of the 300,000 IIM account holders.

I'm sure today's discussion will be lively and informative. The only person missing is our former colleague and my good friend Mike Synar, who first got me interested in this issue several years ago. Mike was tenacious in his pursuit to shed light on the issues of trust fund management in the BIA during the 1980's. He forced us all to look at the problems and was instrumental in helping us take the first steps toward fixing them. We have a long way to go but I believe Mike put us on the right track.

I look forward to continuing the debate through this Task Force.

Mr. HAYWORTH. Thank you, Mr. Kildee. Now the gentleman from Montana, Mr. Williams.

STATEMENT OF HON. PAT WILLIAMS, A U.S. REPRESENTATIVE FROM MONTANA

Mr. WILLIAMS. Thank you. Mr. Chairman and my colleagues, this government is insistent, as it should be, in requiring American's private financial institutions to meet strict mandatory requirements in their private trust departments. Our Government is insistent, as it should be, in requiring American's private pension systems to meet strong mandatory fiduciary responsibility in their own private pension trust funds.

The Congress began to suspect some years ago that a portion of our own Government, the Bureau of Indian Affairs, was incredibly negligent in protecting tribal trust fund accounts and as we have examined this negligence we discovered that it is not the fault of this Administration or the previous Administration or the Administration before that. The problem goes back perhaps 100 years.

The money in these trust fund accounts does not belong to the government. It belongs to American citizens, in this instance America's first citizens, Native Americans. The BIA is charged with the responsibility of protecting those dollars, and the BIA has failed to meet that responsibility.

About ten years ago the Congress, appalled by findings of mismanagement of those trust funds established the Indian Trust Fund Account Reconciliation effort. BIA spent five years and $21 million in a substantial erstwhile effort to document and reconcile trust fund accounts. BIA did a fairly decent job considering the requirements and the amount of time they had, but they discovered that the accounts can simply not be fully reconciled because the trail is so old and the fund so mismanaged that the trail runs cold.

There may be a number of problems in this matter. I have identified two that I want to mention this morning briefly. When I say problems, I mean problems for which we have to find answers. First, we need to determine the losses and compensate the account holders. I suspect from my years of looking at this, both on this Committee in concert with our old pal, the late Mike Synar, that the courts may be the only way to fully pay back these account holders.

The second problem is a matter of establishing an account receivable system that functions properly. The special trustee, Mr. Homan, has outlined the changes that are needed to bring these systems into compliance with trust standards and to insure the Indian account holders receive their money in the correct amount and in a somewhat timely fashion.

He has estimated that the cost of instituting these necessary reforms at $100 million. I found out just yesterday that the House Interior Appropriations Committee is about to come to the Floor with legislation that contains not $100 million or $25 million, which means we could start toward solving this in four years.

No, not $25 million, $1 million. This week the House Interior Appropriations will be on the floor with a pittance of money necessary to correct this problem. As I made a few calls last night and this morning, I have discovered that it is probably too late now to offer

an amendment to correct that problem. I question that we can properly inform the necessary Members of Congress in time to get a majority vote to add more on top of the pittance that the Interior Committee wants to provide.

But the longer it takes, the more liability this government, i.e., the taxpayers, incur. Some suggest that the liability is amounting to millions of dollars every 30 days, money that eventually will have to be repaid should the courts so find. If this problem could be corrected, say in four or five or even six years with the beginning appropriations this year, then the taxpayers might avoid a liability that many estimate at one-half billion dollars.

Finally, I want to say this. I want to say it as carefully as I can, but my examination of a number of records that have been brought to me indicate possible evidence of fraud, theft, and graft. Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman from Montana and although we do not see eye to eye on every issue, I oppose the fact that he has chosen to leave us and go back home. And another gentleman who I guess will be taking his leave of this chamber for another experience on the other side of the Hill. I will recognize now the gentleman from South Dakota, Mr. Johnson.

STATEMENT OF HON. TIM JOHNSON, A U.S. REPRESENTATIVE FROM SOUTH DAKOTA

Mr. JOHNSON. Thank you, Mr. Chairman. I want to identify and associate my remarks with that of my friend and colleague from Montana, Mr. Williams. I think that he very neatly laid out the history of this tragic circumstance that our Task Force here today is grappling with. The problems that we have with the fiduciary responsibility of the Federal Government goes back to the early part of the 1800's in fact, and has been struggled with by many, including our departed colleague, Mike Synar.

I am looking forward to working closely with you, Mr. Chairman, in a bipartisan fashion and with the Administration to make sure that we do in fact after countless reports and studies and investigations and periods of hammering actually begin to make progress to put the fiscal resources into the proper hands and that is in the hands of the tribes and individual Native American citizens. It is their money as has been noted by Mr. Williams, and we have, I think, a very great legal and moral responsibility to see to it that at last this fiasco is brought to an end.

So I thank you again for your leadership. I look forward to working closely with you. I look forward to the testimony today.

Mr. HAYWORTH. Thank you very much. Now we would be happy to hear from the special trustee, Mr. Homan. Good morning, sir.

STATEMENT OF PAUL M. HOMAN, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR

Mr. HOMAN. Good morning, and thank you, Mr. Chairman. It is a pleasure for us to be here to present testimony on trust funds management. Before I read a brief statement, I would like to introduce my colleagues here, Mr. Joe Christie, who was the Director of the Reconciliation Project from the Office of Trust Fund Management. Joe will be giving us a presentation after mine on the sum-

mary findings of the report that dealt with the Reconciliation Project.

To my right is Jim Simon, who is the Deputy Assistant Attorney General, U.S. Department of Justice; and to his right is Ed Cohen, who is the Deputy Solicitor, U.S. Department of the Interior. They will assist us in answering any legal or policy questions.

If I may, Mr. Chairman, I will proceed with the precis statement, but I would like my full statement to be submitted for the record and that full statement also includes the strategic plan.

Mr. HAYWORTH. Without objection, so ordered.

Mr. HOMAN. Thank you. Mr. Chairman, my statement will focus on the reconciliation report of the Secretary of the Interior and what it may take to resolve claims arising from past trust management practices, an interim report by the Special Trustee, and what it may take to ensure sound trust management in the future. Each of these points is discussed in turn.

Beginning with the Section 304 report required by the Reform Act of 1994, Section 304 required the submittal of a report by the Secretary of the Interior to the Congress regarding the reconciliation of tribal trust fund accounts for the period July 1, 1972, through September 30, 1992. The Secretary submitted the required report to Congress on May 31, 1996, and I believe the Committee has been provided with a copy of that report.

Let me just briefly summarize its contents. As the Secretary's report indicates, commencing in January, 1996, each account holder was provided with a report on the reconciliation of its accounts, along with account statements that show account balances, reconciled transactions, and proposed adjustments. Subsequent to the distribution of the reconciliation report and account statements, a National meeting to which all account holders were invited was held in Albuquerque, New Mexico, to explain the reconciliation methodology, the report itself, the account statement format, content and terminology.

And then following that a series of five regional meetings, of which three have already been held, were also scheduled to work directly with each account holder to address questions and issues on each tribe's specific report. Let me give you just a summary of the findings to date and they are largely inclusive at this point.

As the Secretary's report indicates, through April 30, 1996, 77 of the 280 tribes involved in the reconciliation report have responded to our questionnaire. Specifically, only two accounts have accepted their report balances and five account holders have disputed their account balances. The rest of the account holders have not specifically accepted or disputed their account balances and many have requested additional time and/or meetings with the Department to go over these very complicated reports in a great deal of detail.

And as I said we have been having the scheduled meetings, three of which have already been held, two of which are scheduled for later this month, and the final one I believe is going to be held in July. Further, until the regional meetings are completed and the tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department simply will not know how many tribes will dispute the balance of their accounts.

At that time, which we estimate to be late summer or early fall, the Department will be in a position to propose a mechanism to resolve any such disputes. A final report on account holder attestations and a mechanism to resolve those disputes will be submitted to the Congress in final form by November 15, 1996.

I would now like to present a brief interim report on my personal assessment and professional assessment of the trust management systems and the conceptual strategic plan which my office has devised to deal with the longstanding problems affecting the Federal Government's trust management systems. My assessment concludes that the undeniably poor quality of the trust management systems and the condition of the historical records effectively prevent the Federal Government from providing an accurate and timely accounting to the American Indian trust beneficiaries.

This can be demonstrated somewhat quantitatively both by the Reconciliation Project results and a report which was issued last year by the Department of the Interior called the IIM Improvement Project Report. Again, both of these reports are public and one is the subject of today's hearing.

First, beginning with the Reconciliation Project report, in January we disclosed the $2.4 billion you mentioned in your opening remarks. That involved 32,319 transactions for which source documentation could not be located. The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust record keeping practices followed by the private sector.

Of particular concern to me is about $694 million in unreconciled disbursements and another disbursement package which contains a little over $2 billion in so-called reconciled items for which complete disbursement packages could not be located. These are large disbursements to tribes in care of third parties which did not have both tribal and other government signed authorization.

The Reconciliation Project also confirmed what the General Accounting Office calls the "lack of a known universe of transactions and leases." This stems from the Federal Government's lack of an ability accurately to trace a collection to a source lease or a contract. That in turn results from the fact that the Bureau of Indian Affairs does not maintain the master lease file, nor does it maintain a consolidated accounts receivable billing system which you mentioned.

Without a master lease file and accounts receivable billing system there is no way to tell how many total contracts the Bureau actually manages and no way to tell whether or not the collections called for in those leases or contracts are actually being collected. So when those hit the general ledger we were only able to check the source documentation of the entries made to the general ledger. We were not able to trace those entries back to an original source document in every case.

My strategic plan also discusses the deficiencies and defects in the IIM accounting system, IIM referring to the Individual Indian Money accounts of which there are over 300,000 maintained by the Office of Trust Fund Management. Let me just briefly touch on some of the difficulties we are presently encountering.

There are over 50,000 IIM accounts with over $44 million for individuals with no address or an incorrect address and what the Office of Trust Fund Management calls whereabouts unknown. There is over $1 million in one of those accounts. There are over 15,000 IIM accounts with over $21 million held for individuals who were formerly minors, the vast majority of which should have been disbursed when the age of majority was reached.

There are over $43 million in overdraft interest clearing accounts resulting from interest mis-postings prior to 1993. Some of these mis-postings go back to conversions that were made in the mid-'80's. In effect these are non-earning assets which deprive the current IIM account holders of over $2 million in annual income.

There are general ledger differences, losses, if you will, of over $26 million which are old and which should be cleared by congressional appropriations. There are over 130,000 missing Social Security numbers involving accounts with over $175 million in them. These are taxpayer ID numbers which are required now of the Federal Government and have been required of the private sector banks and trust companies for some time.

There is a continued maintenance problem of over 153,000 accounts which are over half of the total with balances of less than $10. We spend far in excess of that and this is taxpayers' money that we are spending maintaining those particular accounts. In my view, Mr. Chairman, these conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries.

They are caused by inherent defects in the poor trust management systems the government uses to manage the Indian moneys. These defective systems essentially prevent the government from meeting the fiduciary accounting and reporting standards of the American Indian Trust Management Reform Act of 1994 and standards of ordinary prudence which are applicable to all trustees, public or private.

The Special Trustee's conceptual strategic plan addresses each of those issues I mentioned and identifies nine initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. What is needed first is basically a complete overhaul of the four basic trust management systems.

We simply must acquire a new trust resource asset and management delivery system by which the Bureau manages the Indian lands. We must acquire a new accounts receivable and billing system that uses lease-contract, and landownership information of which we have none on a consolidated basis. We must acquire a new trust, depository, payments and delivery system for Individual Indian Money accounts to reduce the type of exceptions that I just noted.

And finally we must address the land records and title recordation and certification system which the Federal Government utilizes. And just to note there, that system at times in terms of transfers of property to individual Indians runs two years in arrears. We have no staff, no staff, to catch that up. There were programs two years ago and, last year, which failed to be funded by

the Congress which actually reduced that staff from 126 to 90 last year.

If we are ever going to catch up on some of these exceptions the Congress simply must appropriate the money for us to do so. Along with the overhaul of those four basic systems must come improvements to the general ledger system, record keeping and archiving, obviously, risk management, the technology system, and organizational structure.

As you know, implementation of this strategic plan will cost over $100 million, and while it is a considerable sum of money, I wish to note that Arthur Andersen, our contractor in 1992 in looking at a Reconciliation Project similar to the one you are about to see here, IIM accounts estimated that it would cost $108 million to $281 million to just reconcile the IIM accounts in the same way that we reconcile the tribal accounts and that exceeds the entire cost of this strategic plan.

In closing let me just say that the problems in trust management systems are longstanding ones. If mismanagement or negligence or fraud occurred, it stemmed principally from allowing the trust management systems, record keeping systems, and risk management systems to deteriorate over a 20- to 30-year period. They essentially became obsolete and ineffective over that same period.

For many of those years, including many years since 1990, the trust programs were seriously understaffed and underfunded. As a result, the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems, and prudential best practices taking place in the private sector in the trust industry.

This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented immediately regardless of if and when the comprehensive strategic plan called for in the Reform Act is completed and approved. Each day the status quo continues the Federal Government's exposure to claims of mismanagement and liability will continue to grow and it is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

Mr. Chairman, that concludes my statement. I would like Joe Christie here to take you through the absolute details and then my colleagues and I will be happy to answer any questions you may have or remarks on the Reconciliation Project itself. Thank you very much.

[Prepared statement of Mr. Homan may be found at the end of hearing.]

Mr. HAYWORTH. Thank you, sir. Joe, we would be happy to hear your presentation.

STATEMENT OF JOE CHRISTIE, DIRECTOR, RECONCILIATION PROJECT, OFFICE OF TRUST FUND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. CHRISTIE. Thank you, Mr. Chairman. This is a summary of the findings of the tribal trust fund reconciliation. We will be talking about non-investment funds. The total of the non-investment funds is $17.7 billion. Of that total we reconcile $15.3 billion with

a non-reconciled balance of $2.4 billion. This is the total value and the values are expressed in absolute terms.

Let me explain absolute terms. You got a checking account and you deposit $1,000 into your account and then you turn around and write a check for $1,000. Your account balance is 0, but in absolute terms we are talking about $2,000. The reconciliation results of those non-investment funds that were reconciled have an accuracy rate of 99.97 percent.

Now let us talk about an analysis of the unreconciled funds, the $2.4 billion. The analysis of the unreconciled transactions are made up of receipts which totaled $1.1 billion, and these are received and credited to the tribe's account. They are made up of transfers which are $479 million, and these are funds transferred within one tribe's account. A tribe may have numerous accounts and these are transfers between accounts within the same tribe.

And, thirdly, they are made up of disbursements. These are funds paid out of a tribe's account. In an absolute term we are talking about $808 million. Now the characteristics of an unreconciled receipt, first of all, the funds are credited to the account, they are available for use by the tribe, and they are earning interest. What we cannot do is verify that the funds credited were credited to the correct account or in the correct amount.

The characteristics of unreconciled transfers. These transfers are within the same tribe's account. They were credited to the account. They were available for use by the tribe. They are earning interest. We cannot verify the transfers to or from where to or from the correct account.

The characteristics of an unreconciled disbursement. These are deductions from a tribe's account to an unidentified recipient, we do not know who the check went to, and we cannot verify the proper purpose or account from which it came. We know that on the general ledger it showed that it came from such and such account, but we do not know if that was the proper account. This total $808 million.

Now let us look a little bit at the $808 million because what we are talking about is absolute values. First of all, $73.5 million of these disbursements are what we call positive disbursements. These are canceled checks with the amount actually was recredited to the account so we would deduct that. That leaves us with $735 million. Out of that $735 million, $38.9 million of that is attorney fees from a judgment award and expert witnesses for a total of $1.4 million. These are the first deductions that come off by law, statutory deducts, that come out of that award. So that leaves us with a net unreconciled disbursement of $694 million in tribal funds. Thank you, sir.

Mr. HAYWORTH. Mr. Homan, I want to go to one particular question. I have a whole series of things here that I can ask and I will be happy to get to those in just a second, but there is one big question that comes out of all of this concerning your estimate that implementation of reforms needed will cost in excess of $100 million. I believe I heard $121 million. You cited the Arthur Andersen report that puts it in the range of somewhere between $108 million to $281 million.

Now the perception of most folks on Main Street, America, is, OK, we have got a situation where we cannot account for $2.4 billion. Could you explain to us the justification of an expenditure of $100 million plus to clear up the discrepancy because to some it will appear as if we are pouring gasoline on a ranging fire. This is a huge expenditure of money to try and rectify an account in arrears.

Could you explain in layman's terms why the citizens of America should be willing to pony up $100 plus million to solve this $2.4 billion problem?

Mr. HOMAN. I would be glad to try to explain that. The $100 million I referred to fixes the system as it currently is. The system can be compared to a simple accounting system used in every bank and trust company in the United States except for the land records and ownership system which is unique to the government. So all we are saying is that it is going to take $100 million to install what every bank and bank trust company has to account for the Indian moneys from start to finish, starting with the revenues coming off the trust lands and going through an accounts receivable system, depositing the money, and investing the money in their accounts, and then finally disbursing it.

That will not rectify the $2.4 billion problem in the past nor rectify any of the past problems. There will have to be some sort of claims resolution to address any damage that may have occurred and as we said in our testimony we won't know what that mechanism will be until we hear from all 280 tribes later this year. $100 million is simply to go forward.

I compared that to just what it would take to reconcile the IIM accounts in 1992 and that number was $108 million to $281 million. The Department and the Congress were notified of this and decided not to do that because the cost benefit relationship just was not there. So the $100 million is just to fix the system, and if we do not we will continue to expose the Federal Government to claims of more mismanagement and more liability as Mr. Williams indicated on a daily basis.

Put one other way, as one of my staff members said last week, we may be in the fourth year of a new Reconciliation Project. We completed the last one in 1992. If we did another one today, I am convinced that we would find the same type of exceptions because the systems that the Bureau uses to manage trust functions are simply defective and cannot be brought up to a commercial standard without the type of overhaul we have just seen.

$100 million in a lot of money, but if you look at it as a 30-year problem of negligence in terms of underfunding these programs, that is about what a bank this size would spend in keeping its technology up to snuff and these are simple accounting systems that we are talking about, not a Cadillac, a plain Chevrolet.

Mr. HAYWORTH. Some of my colleagues here in their opening statements talked about a history of this that extends far beyond recent administrations. And of course as the Special Trustee you are not here as an archive historian, but in your personal opinion to avoid these problems in the future in addition to what you are recommending just to get our head above water in terms of $100 million, it is perhaps an unfair question, I do not mean to put you

in the situation of Monday morning quarterbacking, but in a perfect world what should have been done and when should it have been done to solve this problem 30 years ago or whatever timeframe you would take?

Mr. HOMAN. Well, in my view the Bureau systems are very much like the banks were in the 1960's, and I was a bank examiner in the 1960's so I think I can speak with some authority there. The banks I was looking at in the 1960's were just converting from manual systems to automated systems. And you all know and I do not have to tell you of the great leaps forward in computer technology that have taken place since then.

What has also taken place is the ability to cut deposit lag times and other payment systems down to instantaneous transactions anywhere in the world. The Bureau's systems did not keep pace and what may have been acceptable in the 1960's or '50's simply is not acceptable today. The second thing they failed to do, in my view, was to keep record keeping similar to what the private trust companies keep, which since World War II has essentially been in perpetuity.

There is no excuse for missing records. There may be explanations for it, but there is simply no excuse for missing records. So had the Bureau kept pace with its archiving systems, record keeping systems, had it made incremental investments in technology over those years as every small bank did over the period, I think it would have had a system that would not create any extraordinary exceptions today, and that is my view.

Mr. HAYWORTH. Let me ask you going from that look back to the past to examining the future with your own past experience as a bank examiner, with your knowledge of what is transpiring in terms of, to borrow a popular phrase, cutting edge technology, and in this glorious information age with the computer break-throughs we have now, is there not a possibility that with technological improvements, the cost factors you are dealing with here to rectify the situation, could the cost of reforms not be economized a little bit more or this chunk of change we are going to have put out in your opinion is the bare minimum we have to do, $100 million to get our head above water, so to speak, and move to rectify it, or is there any possibility that with the improved technology we could find an economical way to do these things?

Mr. HOMAN. The $100 million is largely in investing in some 1,200 work stations for both the tribes and the Bureau of Indian Affairs and upgrading some 800 existing work stations. It is highly technical. It involves core systems, investments, high tech, if you will, telecommunications systems. Again, not the Cadillacs of the world, but plain vanilla systems that are available in most financial institutions today.

Once that is achieved I think you can then expect efficiency and you will see in the five-year projection that it costs about $20 million a year to maintain this system and keep it up to date. I will throw out one number that we calculated earlier this year when we tried to address the fractionated heir ship problem which drives some of our land records and ownership problems.

We spent $33 million a year just to keep track of fractionated interests in landownership of less than 2 percent of the total. So I

think you can eliminate nearly all of that and to get your pay back just out of that alone. Now if this were a private sector company, Mr. Chairman, you could expect to get out of what you would call general and administrative expenses in the private sector or in our case, staffing about a 25 to 30 percent cost saving. These savings would exceed the $100 million cost in about three years. So the pay back is going to be there in efficiency and I believe we should go forward with that system. I do not think we have a choice.

Mr. HAYWORTH. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Are you aware of any other area of U.S. Government financial management that seems to be as badly managed as has been the Indian trust fund?

Mr. HOMAN. I am not personally aware, no.

Mr. KILDEE. Do you have any suspicions that might be in the area as badly managed?

Mr. HOMAN. I just cannot speculate on that.

Mr. KILDEE. Let me ask you, is your mission both looking backward and see what has happened and looking forward to see what can be done to remedy or prevent this from happening again?

Mr. HOMAN. The mission of the Special Trustee is to produce a strategic plan to reform this system. That was the intent. When that is approved by the Administration and the Congress, then I am to oversee the implementation of that plan. My office sunset after that. It does not include a look back, although necessarily I have a consultation role in the Reconciliation Project results and in seeing it through the claims process.

Mr. KILDEE. Should someone be looking back? Should someone be looking back to see why or how this happened or who may have made it happen or at least permitted it to happen?

Mr. HOMAN. There are three current reports that I would urge you to take a look at which go at different aspects of this problem in different ways. One is the Reconciliation Project report, which as we indicated, quantifies to a certain extent what the difficulties in these systems are. Another is a report issued by the Department itself last year, which was the IIM improvement project report, which I believe the Congress has a copy of, which goes through in detail some 30 different exceptions, internal control exceptions, management exceptions, systems exceptions, if you will, on the IIM accounting system itself.

Those are two of the basic courses. The third report is the GAO report which critiques the Arthur Andersen Reconciliation Project report, of which you will hear about probably in the next panel or two. And then previous GAO reports going back the last ten years. Those collective reports in my view at least isolate each of the problems, maybe not their depth, but isolate also some of the remedies, which do not differ substantially from my own assessment, which is the fourth report I refer you to and my own master strategic plan.

Those four reports quantify for the first time, I believe, in a long time, the problem. Always in the past, and someone recenty mentioned how many reports there were. I went to a NCAI, National Congress of American Indians, meeting last week. There was a report in some of their material there that indicated that since 1834

the Congressional Research Service had located about 1,050 reports on BIA of mismanagement.

But I think how these reports differ from those which did not necessarily get acted on was the fact that all of the previous reports were based on necessarily anecdotal evidence from which it is very hard to generalize to the whole in terms of remedies. But I think those four reports that I mentioned differ in that they quantify the problem for the first time and really suggest remedies to deal with it.

Mr. KILDEE. With your background looking at the $2.4 million reconciled, do you think there might be a mixture of some nonfeasance, some misfeasance and some malfeasance involved here?

Mr. HOMAN. The contractor was not specifically instructed to look for malfeasance or fraud, if you will, or embezzlement, but they had an obligation as a professional organization to report it. This is Arthur Andersen. I talked to them about this and they said that they would have reported any malfeasance or fraud had they run across it. That was not their specific purpose, but they found no fraud.

And these errors are spread over the Bureau's operations nationwide. There is no particular area that is any better or worse than the others which leads me at least to conclude that these problems are essentially driven by poor systems rather than by the malfeasance of particular individuals.

STATEMENT OF JIM SIMON, DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. SIMON. Congressman, may I add to that, please? Let me repeat, if I may, something I have said to many people who are concerned about this problem in many private meetings, and that is that if anyone has any evidence of malfeasance or misconduct in connection with these trust funds, I would urge them to bring that evidence to any number of government agencies that are interested in pursuing that kind of misconduct.

That would include, for example, the Inspector General's office at the Department of the Interior, it would include the FBI, it would include the Department of Justice, who would be interested in pursuing any evidence that is brought to our attention. The other thing I would like to add is that my understanding is that Mr. Homan's future plan by improving the record keeping is designed, one of its goals, as I understand it, is to minimize the risk of malfeasance and to provide better deterrence and detection systems.

Mr. KILDEE. A better system makes malfeasance more difficult to accomplish.

Mr. HOMAN. That is exactly the point.

Mr. KILDEE. May I ask one final question? From your background with working with banks, what would happen to a private bank that had such a system as this?

Mr. HOMAN. Well, this is going to be speculation and I won't get into the legal aspects of it. But if this were a private bank—and I was also a bank supervisor for 20 years—these types of exceptions would be considered unsafe and unsound by definition in the bank regulatory legal terms.

And the regulators would then appropriately be compelled to take what they call special supervisory actions, which are legal actions, notably a cease and desist order, to compel performance on the part of the bank or they would be subject to civil money penalties of upwards of $1 million a day for serious violations of the cease and desist order. That is what a bank trust department is under in terms of the government requirements.

Mr. KILDEE. Did you want to respond to that also?

Mr. SIMON. Certainly, Congressman. I think that—well, there is no one at this table who is defending the system as it exists and I think Mr. Homan's report and his testimony about the Interior Department's desire to fix the system speak for themselves. The question of what the legal consequences are for the past is a very complicated one.

The government has certainly trust responsibility here to the account holders. How that trust responsibility should be interpreted in light of each account and the circumstances of each account is a very fact-specific situation. What we have set out in Mr. Homan's testimony is the plan of the Department of the Interior to receive from the tribes over the next few months the remainder of their disputes over the accounts.

And what we hope to do by the end of the summer and into the early fall is to look at those disputes, see which of those disputes can be resolved systematically. Our goal is to determine what the government should compensate and to provide compensation as promptly as we can to determine what the government should not compensate and to be able to distinguish one from the other in the most expeditious way.

No one wants here 50 years of litigation or hundreds of millions of dollars spent by attorneys to resolve those disputes.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Kildee. I welcome the gentleman from California, Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. I am sorry I was late. This is a subject that interests me and I came when we were talking about potential remedies in accounting practices, new equipment, systems, and so forth, but just from listening it seems that we have a real cultural problem at the Bureau and more radical solutions were thought about rather than trying to solve the problem internally with system changes, accounting changes, and so forth, possibly outside trust management, bringing in people to actually operate the trust obviously with supervision and cooperation with the various Indian tribes of the Bureau itself, any type of investigation into that?

Mr. HOMAN. We have looked at those alternatives. The strategic plan remedies of the four basic systems do not preclude that. What we are after is a common set of policies and procedures which are necessary. As trustee the government must direct under a common set of laws, which is what the Congress essentially must direct.

But the systems themselves can be operated either centrally or under what they call a client server mechanism. The deliverer of those services can be an outside person. It can be outsourced so to speak and governed either by the Bureau itself or ultimately the Indian tribes themselves. Many are under self-governance, a gov-

ernment that is perfectly capable in certain circumstances of operating these basic systems themselves. We are anxious and one of our goals is to turn it over to that process.

We must, however, maintain a centralized system of accounting and control. That is our responsibility as trustee. Too, the costs would be prohibitive if we were to provide these types of systems to as many as 300 individual tribes, which is our population of trust accounts.

So we are looking at those alternatives to gain those efficiencies, but in a sense the government is still going to have to be in the position of designing those systems and controlling them as long as we have the trustee's responsibility.

Mr. CALVERT. Well, that is what concerns me. I think from the outsider observer, casual observer, even to the various tribes, if there is not fraud and abuse involved in this certainly there is a level of incompetence or something else occurring here. If you have the same people involved in running those systems and changing those accounting practices, maybe we are just going down the same path with the same unfortunate situation that we are in.

Mr. HOMAN. Let me try to address that. You are correct that I think it is a logical assumption to make. I have taken a great deal of time in the last six months, however, to visit the Bureau's operations in the field to see how they and the tribes operate these systems and I can tell you that I could bring myself and 20 of the best bankers I know and try to operate these systems and we would be unable to do it as well as they do.

So I think their systems are broke, they are obsolete, and I think the talent quotient there is sufficient to operate a new system with the proper training. So I want to say that up front that I have no criticisms to make of the Bureau of Indian Affairs' managers. I think by and large they are competent and doing the best job they can albeit with a broken system.

Mr. CALVERT. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you. The gentleman from Montana, Mr. Williams.

Mr. WILLIAMS. Mr. Homan, I mentioned in my opening statement that the House Appropriations Committee that will be coming to the Floor has requested only $1 million to begin the correction of these systems. You estimated an amount of $100 million. For the first year President Clinton asked for $7,500,000. Given the arc of information understanding knowledge about what to do, how much could the correctors of this problem absorb in appropriations in the first year? Could you accept and absorb and appropriately spend $25 million?

Mr. HOMAN. Yes. Let me try to go through the President's budget a bit. The President's budget allocated $13.6 million for the strategic plan implementation. In addition, it allocated $1 million for a requirements analysis and user inventory that we requested and then finally $1.2 million for the staffing of my immediate office which now has only two people in it. So if you add that up, that is about $16 million.

We have to do about $4.5 million worth of preliminary investing before the plan can proceed. The preliminary investing involves $2 million in rewriting some of the manuals, legal and operating. It

involves another $2 million to clean up the data base to try to clear up some of the exceptions which I noted earlier and it involves about a half million dollars in outside contracting fees.

That leaves about $9 million for implementation of the plan. The first thing we want to start with is solving the IIM accounting problem which we think we can fix within one year. That will cost $17.8 million. So how I would do this take the $17.8 million, add $4 million to it, that is $22 million, and then another $10 million to implement the first phase of the other three core systems. That is $32 million for the first year. Now that is complicated to follow and I can provide in writing those numbers.

Mr. WILLIAMS. I think maybe some of us that are interested in trying, if not in the House perhaps in the Senate, if not there in a conference Committee, to increase the amount being appropriated and those most interested in doing that may very well be——

Mr. HOMAN. The most critical use in my view, and the Secretary agrees here and also the Administration, is to fix the IIM system. You can do that this year for $22 million. But as you noted the House reduced all of that to $1 million which will not enable us to proceed with any of these reforms.

Mr. WILLIAMS. Let me pursue a different matter. I appreciate your willingness to help on the appropriations. You mentioned quickly in answer to questions, mentioned your qualifications. Why don't you give us the credentials which you bring to this position of Special Trustee here in 30 seconds?

Mr. HOMAN. I will do that in less than 30 seconds. I was a career bank examiner with the Office of the Comptroller of the Currency for 18 years, and I spent the last five years of that service as the senior deputy controller for bank supervision, which was the senior career position in the office. We supervised essentially the 4,700 largest banks in this country.

I left there in 1982 and went to the private sector and then have been associated with five different restructurings in the private sector, all successful. I was the CEO of four of those banks, the last being Riggs National Bank here in Washington, D.C.

Mr. WILLIAMS. Thank you. In some of those positions, particularly as examiner, like all examiners as you were looking at accounts and processes, I assume that after some years of doing this you could identify glitches in this system, in the accounts, that indicated to you either intentional or unintentional wrongdoing, but in any event indicated to you that the results of those accounts were not what they should be.

I assume too that there were some of these what I am calling glitches, for lack of knowing what the technical terms might be, some of these discrepancies that perhaps indicate to you and other examiners the possibility of the illegal movement of money, in other words, off ramps from the main interstate flow of money, off ramps that should not be there. In your look at these accounts, have any of those discrepancies, glitches, or off ramps been obvious?

Mr. HOMAN. I think it is fair to say that all of those have been obvious here, but as I said earlier we have not detected any fraud or malfeasance in our look back by Arthur Andersen. However, having said that, as a bank examiner or accountant, the reason you

have internal controls and accounting standards and record keeping standards in the first place is to minimize those type of glitches.

And with missing records there is simply nothing you can say. The possibility of course exists and the opportunity exists and lack of internal controls just exacerbates that opportunity for malfeasance or criminal activity, but again we have not found such to date.

Mr. WILLIAMS. If there were, and I am of course among those who hopes there was not, if there was criminal activity given the nature of the accounts and the movements of the money was that illegal activity, that criminal activity, likely to have come from within or outside of the various agencies of government that have jurisdiction over the movement of these funds and more agencies than simply the BIA, of course, have a hand in the process of the movement of these dollars?

Mr. HOMAN. Well, anyone by and large, and these numbers are going to be probably wrong, but most of the transactions taking place are strictly within the Bureau of Indian Affairs. There is a good deal of money that is collected outside by the Mineral Management Service which sends the money directly to the U.S. Treasury so they are involved in some of the financial transactions.

But their systems are in my view at least, and I have looked at them, are much, much better than the Bureau's. They have kept up to date. They also use the same system to collect mineral revenues on behalf of the American public for the Bureau of Land Management lands. So essentially the defective systems are almost solely in the Bureau of Indian Affairs. And so the opportunity if it exists is with them.

Now, Joe, you may want to add to that because Joe follows the transactional flows here much, much better than I did and he has looked at a good many of these transactions over the last five years and he might be able to add an insight that I cannot.

Mr. CHRISTIE. Well, the only thing I would add to that, Mr. Homan, is that of known problems in American Indian resources many of those have occurred such as the Winnind River, where the resource was stolen before it was ever paid for, which would fall under the jurisdiction of the agency that was responsible for the on-site monitoring, which in most cases is not the Bureau of Indian Affairs.

We also discovered problems where we were transferring data from one system to another. Most of our errors that came about were transposition type errors where we were moving transactions between MMS and the Bureau of Indian Affairs having to take one code sheet and then encoded it at another spot.

One of the things that the records do indicate, the missing records do indicate, is that it is across all years. There is as many missing records in 1992 as there were in 1973 or 1972 or 1976, so the record keeping is a major issue, a major problem, and it permeates not just the Bureau of Indian Affairs, but it also goes into our Federal record centers and even into the archives.

We have had to go to 12 or 15 different Federal record centers to try to find records. We had to go into the archives to try to find records. These archives and Federal record centers would shut

down and move the records somewhere else in trying to track those. It would have been so much easier and we did make recommendations that we create one Federal record center for all Indian transactions so that we do not lose things in the shuffles and we have one location to send them to.

In addition to that, we did run across early on the fact that we did not have the accounts receivable. We made recommendations that one be established quickly. The way that money was received for did not always display the particular lease and the amount of money that was received for that lease which created audit trail problems.

We made recommendations to management to rectify that situation so there are a number of different entities that do come into play on this in the record side, the Federal record centers, the archives on the monitoring side, BLM and MMS; but in my review of this, this is a systemic problem, not a competency problem.

Mr. WILLIAMS. Finally, let me note that Mr. Simon and the Justice Department has correctly said anyone with real evidence of fraud or other theft, graft, other illegal activity should come forward and I applaud him for that. I wonder, Mr. Homan, given that you have been involved in uncovering in your past position similar illegal activities, would you say that the evidence, the available evidence, in this matter is such that if there was fraud, graft or theft, we would ever be able to identify anyone guilty of it?

I mentioned in my opening statement very lightly and just at the end that some of the things I have seen indicate the possibility of that, but as one begins to pursue it you find that the trail goes cold because the records are so bad. So I ask you with your expertise and experience, what is your view of us ever being able either through investigation by the Justice Department or others to be able to identify any illegal activities of that type that may have gone on in the past?

Mr. HOMAN. Well, with respect to the missing records which is the big problem here and why we could not do a complete and accurate accounting, there is no opportunity to trace those further. Now having said that, there is the possibility that if we spent a good deal of money looking for further records that we would find more.

It is my view that further search is probably not going to have an appropriate cost benefit relationship. We did an earnest job in trying to find these records. That does not mean they are all missing. We just could not locate them in our first round. But without records you cannot trace a criminal transaction and so you will never be able to verify for sure whether some of those transactions were fraudulent or not. And that is about the only thing anyone, much less an expert.

Mr. SIMON. Congressman Williams, if I may add to that.

Mr. WILLIAMS. Mr. Simon.

Mr. SIMON. Obviously, the better the records the greater opportunities an investigator might have to trace any fraud that might have occurred. However, I would not want to be too pessimistic. If people have evidence of crimes, we will try to pursue that and there are maybe all sorts of other avenues that our investigators might take.

And I would be loathe to conclude, to speculate on the basis of no information that there is a vast area where we could not do good investigations. I think the only thing we can do is to say that we will pursue whatever leads we are given.

Mr. HAYWORTH. Your testimony and answers bring forth a few more questions so I know that I have one and maybe some other members of the panel would like to proceed as well. Mr. Homan, the Department of Interior has an annual budget of about $12 billion. Have you ever requested that Interior Department funds be reprogrammed to fund trust fund management activities?

Mr. HOMAN. Yes, I have, Mr. Chairman. During my confirmation hearing last year the Senate asked me what it would take to launch the strategic plan for 1996. I indicated in testimony in September that it would take approximately $3.5 million. The presidential budget prior to my getting there allocated $447,000. I indicated to Senator McCain, the Committee chairman, that I would ask the Secretary for $3.5 million. I did. For reasons that the Department has and other priorities, they went back to the presidential budget of $447,000, so essentially that is what I had to this point.

For 1997 I asked for the full funding of the first year which was about $50 million. Again, the Secretary made an earnest attempt to put it on his high priority list. He asked the Administration, I believe, for about $44 million to launch this plan, which would have been perfectly acceptable to me. It came back after the Administration set its own priorities at $13.6 million, plus the million dollars I mentioned for the requirements analysis and plus the $1.2 million for my staff, so about $16 million.

Mr. COHEN. Mr. Chairman, excuse me, if I may interject. After this question was raised on the Senate side, I asked our budget shop for some additional clarification about why Mr. Homan was unable to get additional funds in '96. I would like to ask, if you do not mind, if the budget office could submit a further response to that. I think it has something to do with the inability to transfer funds between different accounts. Moreover, we did not have an appropriation until midway into the fiscal year and there were significant constraints on the ability to move funds around to programs that previously had not been funded. But with your permission I would like the budget shop to be able to submit additional response to that question about 1996.

Mr. HAYWORTH. Mr. Cohen, we would be very happy to take a look at that and also take a look at some of the strictures under which you found yourselves in terms of transferring from account to account. That would be most helpful. We look forward to that written response and help us understand that matter.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, sir. Mr. Kildee, any questions?

Mr. KILDEE. Just a statement. What I worry about is the paucity of dollars which the Appropriations Committee seems to be addressing—directing toward this problem. I worry that it is just part of a lack of prioritizing Indian matters. And I say that cautiously but, you know, I think if, for example, there were a discrepancy in the congressional retirement fund, I bet the Appropriations Com-

mittee would really get in hot pursuit of that and maybe appropriate adequate number of dollars.

I looked at what happened in Indian health services, what happened in Indian education this year, and I would hope that what has happened here in the corporation's process to address this is not a lack of consideration and priority for the needs of Indians in this country. I have seen it too much this year and I say that very carefully, but I do think that Mr. Williams and I should approach the Appropriations Committee and try to encourage them to help the United States Government carry out its fiduciary responsibility to the Indians of this Nation.

It has not been a good year for Indians. Last year was a miserable year for education and health, and I would think that these other areas might possibly be a part of that. I say that reluctantly, but I want to go on record saying that. Thank you, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman. I would also note that it has been my experience in my limited tenure in the Congress of the United States that quite often these problems are simply explained by the traditional divisions of Republican, Democrat, or Liberal or Conservative.

At times as my good friend from Michigan knows there are really in issues of this matter two types of people who serve on the Hill, those who represent what is now Indian country, and those who represent what used to be Indian country. So we have difficulties across the board with any number of our colleagues, but certainly some valid points——

Mr. KILDEE. It is certainly not partisan, we know that. You and I work on Indian matters very closely.

Mr. HAYWORTH. I thank the gentleman for his good will and his good works, and now I yield to the gentleman from California.

Mr. CALVERT. I just have a question. We were talking about the Mineral Management Service. I think I know how this works, but I would like to have it confirmed. The Mineral Management Service is now collecting the royalties that are due on the various Indian tribes throughout the Nation.

After it collects those funds, then it sends those funds over to the BIA for ultimate distribution back to the tribes or the MMS distributes that money directly to the tribes?

Mr. HOMAN. I believe the gentleman on my left here can give you the chain much better than I can.

Mr. CHRISTIE. You are essentially correct. They collect—BLM monitors the on-site MMS collects, they notify us. With the statute change in 1985 we cannot invest the money and start to draw interest until we have at least a faxed copy and recorded to our general ledger, then we can start to draw interest. We then distribute those funds to the individuals and/or the tribes, whoever the owner is.

Mr. HOMAN. The money actually goes to the U.S. Treasury, though, first.

Mr. CALVERT. So it goes from the MMS to the U.S. Treasury to the BIA for management and then distributed back to the tribes?

Mr. HOMAN. Yes, sir, that is right.

Mr. CALVERT. We have some legislation here on the Hill right now which we have just negotiated with the Administration, a Sen-

ate version, my bill which is H.R. 1975 which is the Royalty Fairness Act which in effect we are asking for expanded delegation of the States for collection of royalties, bypassing in effect the Mineral Management Service.

We excluded purposely the Indian tribes because we did not want to entangle that in an involved situation. Would it be more practical if the tribes collected directly, delegated that authority to the tribes, in effect they are responsible for collection as we are doing for the states? Is that something that was considered?

Mr. HOMAN. I think the operative word there is responsible for collection, and that would be the only way we would probably be able to delegate that authority as trustee. They can now, under the Reform Act, withdraw their trust funds from management so long as they accept the responsibility and the liability for running that system.

However, if you did that, the Indian tribes would have to come up with their own system of collecting those royalties. That is a very expensive process.

Mr. CALVERT. Is the MMS charging a fee for those collections?

Mr. HOMAN. The MMS provides much of that service free of charge in terms of research and other activities, system maintenance and the like to the Bureau. So it's a cheap way.

Mr. CALVERT. So it is not similar to the States where the MMS charges back its cost to the States?

Mr. HOMAN. The Indians benefit from the government's research and maintenance system that it uses for its own. Now it does charge the Bureau for certain of those operational activities. But the Bureau gets a very reasonable and efficient deal. All from the MMS and thereby so do the American Indians.

Mr. CALVERT. So the MMS does collect the fee, however, as does the Bureau?

Mr. CHRISTIE. I am not aware that MMS charges us an administrative fee.

Mr. CALVERT. So there is no cost to that?

Mr. CHRISTIE. It is at no cost. The BIA has appropriated funds.

Mr. HOMAN. The BIA charges nothing to the American Indians so it is all a free service to the American Indians and they would have to incur the cost of running that system if they did it themselves.

Mr. CHRISTIE. It should also be noted that tribes do have the authority for direct pay so that the tribes can collect directly on the use of their resources if they so choose and have that as part of their contract.

Mr. CALVERT. Thank you.

Mr. HAYWORTH. Mr. Williams, anything else?

Mr. WILLIAMS. Thank you. The BLM and MMS collect and pass money through BIA to the trust fund. Does the Forest Service have a hand in the same types of pass-through transactions, timber?

Mr. HOMAN. No, sir, the timber is—trust management is run by the Bureau of Indian Affairs or by the tribes and the Forest Service has nothing to do with it.

Mr. WILLIAMS. Is it correct for me to assume that or to say that mining companies and oil companies were sort of on the honor system when it came to providing through BLM and MMS the

amounts that were appropriate? Is the term honor system—I know I am asking you——

Mr. CHRISTIE. Yes, sir, that is correct.

Mr. WILLIAMS. You would say that is correct.

Mr. HOMAN. And I will just add that in my look there neither the MMS, BLM or the Bureau have really good quality assurance audits that those honor systems are truly being honored.

Mr. WILLIAMS. Did the initial Reconciliation Project go to whether or not the companies were paying fair value?

Mr. CHRISTIE. In the design of the Reconciliation Project one of the issues that came up was MMS operations. It was determined we could not reach a conclusion as to how we would do MMS so as part of what we call modification nine was a review of the systems for MMS with a report, but that is as far as we went. There was no reconciliation into MMS or on down to BLM as part of the monitoring agency.

Mr. WILLIAMS. Is there any intention in the future to try to pursue the company accounts to determine whether or not the legal amount due to Native Americans was in fact paid by either agriculture interests off of Indian ag land or oil or gas or mining interests off of Indian land?

Mr. HOMAN. Yes. Part of the strategic plan involves what I call risk management, which is really audit internally and externally and that will be included as part of the risk management system we intend to put in place. But you must first have something to audit so we must change the system before we are going to be able to audit it correctly. That would apply to MMS——

Mr. WILLIAMS. So to look back is not possible to determine whether or not there is tens or tens of millions of dollars missing from these companies?

Mr. HOMAN. It is always possible. This is a very expensive undertaking.

Mr. WILLIAMS. Within the $100 million is it possible?

Mr. HOMAN. I beg your pardon?

Mr. WILLIAMS. Within the $100 million budget it is not possible?

Mr. HOMAN. The $100 million is strictly for operational improvements going forward and does not have any money for further reconciliation or technical assistance in that regard.

Mr. CALVERT. Mr. Williams, if you would yield.

Mr. WILLIAMS. Yes.

Mr. CALVERT. I was wondering if in the question you just brought up would Mineral Management Service within its jurisdiction as the collector of those royalties, could they go back and audit mining companies or oil companies that are collecting on Indian land within their budget?

Mr. HOMAN. They have a better audit system and do do that for the public lands as well as the Tribal lands, but they do not do what I would call a quality assurance audit which is to compare the amount of dollars being generated by those oil levels say against what the private company next door gets for the same barrel.

Mr. SIMON. Congressman Williams, if I may, with your permission and the Chairman's permission it might be helpful for us to supplement our answers with respect to what accounts receivable

systems exist currently and in the past and in particular including the MMS system since none of us at the table have come prepared specifically to address the MMS accounts. If we have your permission, we would be happy to provide that information.

Mr. HAYWORTH. I have no objection to that. We look forward and also would note that we will hear from our friends at GAO that may have a perspective, but if you would also like to take a look, I have no objection to that.

Mr. CALVERT. Mr. Chairman, could we have some questions that we could extend in writing later on for some answers on regarding MMS.

Mr. HAYWORTH. Certainly. I would have no objection to both sides here to do that.

Mr. WILLIAMS. I appreciate the Committee's indulgence in time here. This is a critically important matter. Let me get back to what I fully understand is a very sensitive matter and that is this matter of illegal activity. I just want to make this point because a number of Indian people have made it to me, and that is when one hears the terms of fraud, abuse, waste, illegal activity, draft or theft, one instantly thinks of individuals doing this. An individual at the end of that off ramp collecting a few thousand dollars every few months and putting it into that individual's own pocket.

A number of Indian people have said to me there is also such a thing as illegal activity and theft by companies. I am not in saying this making an accusation, but it does seem to me that if the Justice Department or other agencies are going to pursue this matter we need to understand that the largeness of the crime should not make that crime invisible.

It is an interesting thing in America, if the crime is small enough we notice it, if it is large enough it becomes transparent and invisible. If there has been massive theft by major corporations throughout the decades then Indian people have lost, many of them poor people, have lost enormous amounts of money because of potential illegal corporate activity here.

And so if we are going to pursue it, we ought to pursue not just an occasional individual that might have been able to take advantage in a relatively small way of the terrible misuse of these funds, but we also ought to pursue large corporations that may be equally guilty of even larger theft. I thank you, Mr. Chairman.

Mr. HAYWORTH. I thank the gentleman from Montana for his point. If in fact this is the case we should pursue wherever we find problems wherever they exist, with individuals, with businesses, with the complicity of individuals outside the business world as well. It is a valid point to look and that is the intent of the Task Force and I thank the gentleman for bringing that to bear. Any further questions of this panel?

If not, then we thank you, Mr. Homan. We thank you and your colleagues for being here. We would ask, we know you have schedules that may force you to go other places, but if you can stay or have members of your staff here to hear the rest of the comments, we welcome that as well.

Mr. HOMAN. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you very much. The Chair would also note that we will take about a ten-minute recess here and reconvene at 11:45 for our next witness.

[Recess.]

Mr. HAYWORTH. The Task Force will come to order and reconvene. In the spirit of comity, c-o-m-i-t-y, not comedy, but c-o-m-i-t-y, in the spirit of bipartisanship the Task Force members here after consultation with our witnesses have decided now to put together a panel of our next three witnesses and then we will turn to our friends from the General Accounting Office for information following the testimony of those who are with us right now.

I would point out that next in line to visit with us are Eric Davenport, the Chairman of the Intertribal Monitoring Association for Indian Trust Funds, John Echohawk, Director of the Native American Rights Fund, and I would defer to my good friend from Montana to introduce the third member of the panel.

Mr. WILLIAM. Well, thank you, Mr. Chairman. Elouise Cobell is an old pal, almost of equal importance she is also the Chair of the Special Trustee's Advisory Board. She is a Montanan from Browning, Montana, a member of the Blackfeet tribe. She served as treasurer and controller of the Blackfeet tribe for more than 15 years so she, like some of our other witnesses, brings great credentials to her position on the Special Trustee's Advisory Board. Elouise, nice to see you here today.

Ms. COBELL. Nice to see you.

Mr. HAYWORTH. And I would just simply say, Eric Davenport, I understand you have another representative of your organization here with you today on the panel as well.

Mr. DAVENPORT. Yes, that is correct, and if it is OK with the panel David Harrison has joined us and I think can speak to some of the issues of questions that were raised earlier.

Mr. HAYWORTH. Well, David, we thank you very much and, Eric, thank you for your initiative in having David here for consultation as well. Given the fact that our colleague, Mr. Williams, speaks so glowingly of his dear friend from Montana and also the admonition of the ladies first, I defer then and ask Elouise to begin with her testimony, and then we will follow up with the others.

Ms. COBELL. Thank you, Mr. Chair. I would request the members of the Task Force to let me testify last and I would like to follow up at the end because many of the things that I need to talk to you about needs to have Mr. Davenport and Mr. Echohawk's testimony first, so would that be fine?

Mr. HAYWORTH. Without objection, it is so ordered.

Ms. COBELL. Thank you.

Mr. HAYWORTH. Ms. Cobell, with that in mind we then turn to Eric Davenport for his remarks.

STATEMENT OF ERIC DAVENPORT, CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

Mr. DAVENPORT. Well, Mr. Chairman and members of the Task Force, good morning to you and thank you very much for scheduling this oversight hearing on an issue that is most critical to Indian country. My name is Eric Davenport and I am the Chairman of the Intertribal Monitoring Association on Indian Trust Funds.

My Clickate name is TuAn Aan, and I am the executive officer for the Central Council of Click and Hidi Indian Tribes located in Juneau, Alaska.

At this first hearing of the Task Force, ITMA wishes to extend our great appreciation to Chairman Hayworth and the ten other Task Force members for your commitment on this most important issue, and Congress' attention to the trust fund reforms that are very, very necessary. ITMA on behalf of the tribal governments across the country who form our membership stands ready to work with the Task Force in any way possible to get to the bottom of many of these issues, some of which are extremely complex.

I would like to discuss three major points involving the Indian trust issues. First of all, the recently completed Reconciliation Project of tribal trust fund accounts, secondly, the trust management reforms instituted thus far and the need for additional reforms and implementation of those. And finally the need for this Task Force's continuing support and oversight.

With regard to the Reconciliation Project, I believe it is important for all of us to remember that the Indian Trust Fund Reform Act of 1994 requires the Special Trustee to insure that the BIA provides trust account folders with a reconciliation which is a fair accounting, fair and accurate accounting, of their account balances.

That responsibility has not been met and cannot be met based on the information provided in the report. After an expenditure of $21 million and five years of effort, the government's accounting contractor, Arthur Andersen, disclaims their work by stating that the report is not an audit made in accordance with generally accepted accounting standards and they also go on to express a no-opinion stance on any of the work elements of the reconciliation report.

The Task Force needs to know that when the Reconciliation Project began, it began with a very big picture, a very big image, to deal with all tribal accounts and all elements of it. During the course of that project there were nine official amendments to the contract that were issued and there were over 120 unofficial so-called issue papers issued and published, each of which continued to narrow and narrow and narrow the focus of the Reconciliation Project. It clearly is not a report of which any of us expected when we started the process.

The Trust Fund Reform Act now requires as a result of this report that each tribe either dispute the report or State that they accept the reconciliation report balances as published, and note that it is a full and complete accounting as far as possible. But the fact of the matter is, I should say, and the facts are that only a few tribes may feel that they have an accurate accounting, a very small number of tribes that maybe only have a few thousand dollars on account and maybe they only got it within the last two years.

The vast majority of tribes, however, have got to take a look at these reports and realize that they are not complete, they are not a full accounting, that there are many, many missing documents in them, and to that extent are not able to state that they have gotten a full accounting, nor can they accept their account balances.

It is critically important that this Task Force not be misled into thinking that a settlement is possible for these tribes. Among

major shortcomings in the travel reconciliation reports are the following. First, $17.8 billion in non-investment transactions were considered, but no reconciliation was given in regard to the $200 billion in investment transactions except for only a few that occurred very early on.

Second of all, of the non-investment transactions the government was not able to reconcile $2.4 billion of which over $800 million went out in the form of disbursements. If we can pause here for just a moment and put this into some perspective, the $2.4 billion in very general terms represents about 10 percent of what was dealt with. In other words, $2.4 of roughly say $20 billion. If that accuracy rate stands and we now go in and reconcile $200 billion in investment transactions and they are unable to reconcile 10 percent of those, we could be talking about a $20 billion unreconcilable amount.

There is neither an agreed-upon beginning balance for any tribe with accounts prior to 1972, nor any effort on the part of the BIA to establish any beginning balances for the reconciliation period. The project did not support revenues from any mineral, oil, or gas production monitored by MMS or BLM. For many of the tribes these are very substantial assets. And for some tribes more than 50 percent of the documentation for support of transactions are missing.

You heard earlier that there was an accuracy rate of 99 percent that was reported to you by Mr. Christie. I think this needs some clarification. First of all, it seems to me if you have a 99 percent accuracy rate on accounting, how can you not reconcile $2.4 billion? What that 99 percent accuracy relates to is the clerical function of when the lease was received by the Department was it properly posted to the general ledger?

So we are talking about a one-step transactional figure and that is what they have tied to this 99 percent accuracy amount. Clearly, as I mentioned earlier, the $2.4 billion does not reconcile with the fact of that level of an accuracy rate. Clearly it was much, much higher. Most importantly in the Reconciliation Project was the fact that the IIM accounts or the Individual Indian Money accounts of which there are 300,000 account holders and $509 million in funds was not reconciled.

This has caused extreme frustration on the part of IIM account holders and you are going to hear more about that a little bit later this morning. Tribes and Indians all over the country are very supportive of the efforts to pursue a fairness standard on the part of IIM account holders. Nor did the reconciliation address the several trust accounts which the government managed on behalf of Alaska natives.

Both of these are dealt with in the Trust Fund Reform Act and a simply fairness requirement should be applied here to receive reconciliation on these two categories of accounts as well. In short, the report does provide us with more information than we have ever had before, but it is only the tip of the iceberg. It is only the beginning of this process.

The second point I want to discuss relates to trust fund management advances and what remains to be done, developed and implemented. Let me be clear at the outset here and state that many

significant trust fund management reforms have occurred during the past five years. These reforms were possible because of congressional and tribal support.

First, the Office of Trust Fund Management or OTFM was reorganized increasing the number of staff and qualifications of those staff. This development better permit OTFM to perform many of the functions required by the Trust Fund Reform Act. Secondly, an automated trust funds accounting system has been installed and this allows OTFM to daily reconcile and post activities to tribal accounts.

Thirdly, the appointment of Paul Homan as Special Trustee and the establishment of the Office of the Special Trustee provides the government with a qualified trust management resource that it has never had before. In fact, the appointment of Ms. Erwin I believe about two or three years ago was the first time that the government has ever had in the Bureau of Indian Affairs anybody with professional trust experience and yet they were managing billions and billions of dollars in trust funds and trust assets.

And, fourthly, the 1994 Trust Fund Reform Act provides a statutory infrastructure offering guidelines for future reform. The Congress, tribal leaders, ITMA, and the Special Trustee can all take pride in these advances and we can also experience extreme frustration in the fact that it is only partially done. A great deal is yet to be accomplished to even come close to meeting the standards that we see in the private sector.

The reform process is far from complete and you may find it hard to believe that there still is no centralized custodial services for securities held in the trust portfolio. These repositories are all over the country. Second of all, there is no accounts receivable system to track, collect and account for funds derived from Indian trust assets.

Thirdly, there is no automated accounting system for IIM accounts. So in addition the Trust Fund Reform Act requires the Secretary to account for the daily and annual balance of all accounts held in trust for an Indian tribe or individual Indian account holder and that responsibility is still not being fully met. Until these and other reforms are completed the government's breach of trust to Indian account holders continues. In fact, until these reforms are achieved the Department remains in violation of the provisions of the Trust Fund Reform Act of 1994.

This leads me to my third point which is the importance of the continuing support of this Task Force on the Indian Trust Fund issue. With your support, greater and needed reforms are possible. Without your support I am confident that any ongoing reforms will stop. The Special Trustee must have the additional resources necessary to accomplish the required reforms, in particular this fiscal year 1997 request to begin building the infrastructure that is necessary to accomplish the daily collection, investment, accounting and disbursement of trust funds is critically important to the ultimate success of the implementation of reforms.

Technical assistance funds are needed for tribes to implement the Trust Fund Reform Acts which will offer these tribes the opportunity for self-determination. This could well include the management of IIM accounts. ITMA believes that it is in the best interest

of the Federal Government to assist those tribes who desire to take over these activities and relieve the government of further responsibility.

Technical assistance is also necessary if tribes are going to be able to develop the information which is absent from the reconciliation report. If it is not there somebody is going to have to go out and do it and the BIA was unable to do that. The BIA's reconciliation report does not provide that information and thus tribes must pursue it if they are going to know what they are managing in the future in terms of their own tribal account balances.

ITMA and tribes greatly appreciate this Task Force support in the effort to correct the gross mismanagement of Indian trust funds and trust assets during the last 100 years. The reforms that have been achieved would not have happened if tribes themselves had not been at the table and they would not have been at the table if Congress had not pressed for that to happen.

The additional reforms required and the full implementation of the 1994 Trust Fund Reform Act will require continued active participation of the tribes themselves. ITMA is very grateful for the opportunity to assist the Task Force and tribes in this effort and look forward to a good continued working relationship with this Task Force and the Office of the Special Trustee. At the conclusion or whenever it is the desire of the Chairman, I am available to answer questions.

[Prepared statement of Mr. Davenport may be found at the end of hearing.]

Mr. HAYWORTH. Thank you very much, Mr. Davenport. We would also note for the record that your full testimony will be included without objection as will be the case with other witnesses before this panel.

Mr. DAVENPORT. Thank you very much.

Mr. HAYWORTH. In that spirit, the gentleman who has been in the headlines as of late, Mr. Echohawk, we call on you for your opening statement.

STATEMENT OF JOHN ECHOHAWK, DIRECTOR, NATIVE AMERICAN RIGHTS FUND

Mr. ECHOHAWK. Thank you, Mr. Chairman and members of the Task Force. I appreciate the opportunity to provide testimony on this important matter. At stake are the rights of 300,000 individual Indians and 200 Indian tribes. I will summarize my written testimony here and ask that it be included in the record in its entirety.

Mr. HAYWORTH. Without objection, so ordered.

Mr. ECHOHAWK. My name is John Echohawk. I am a member of the Pawnee Tribe of Oklahoma. I am an attorney and serve as the Executive Director of the Native American Rights Fund. We are a nonprofit organization providing legal advice and assistance to Native Americans on issues of National significance.

We are dedicated to securing justice on behalf of Native Americans and Indian tribes, something we have been doing for 26 years. Our mission is guided by five priorities. One of those priorities is holding the government accountable to Indian people and tribes, and that is why I am here today.

The complete failure of the United States government to properly discharge its trust responsibility in this case is wholly unacceptable. It implicates what we believe is the largest and longest lasting financial scandal ever involving the Federal Government. And in our view it represents yet another serious and continuing breach in a long history of dishonorable treatment of Indian tribes and individual Indians by the United States Government.

What is particularly disturbing is the cavalier treatment of the crisis by the Executive Branch and the Congress. Both branches of government have acknowledged that the Federal Government has failed to account for out trust moneys, yet each branch continually refuses to take the necessary steps to fix the system. That is why the Native American Rights Fund, along with other attorneys, filed a class action lawsuit last week in the Federal district court here in Washington on behalf of 300,000 individual Indians.

By this action, these individuals hope to compel the Federal Government to honor its word and its legal responsibilities. Before I discuss the substance of my testimony, there are several factors which warrant the attention of the Task Force.

First, while the class action litigation is limited to individual Indians, we are in full support of the tribes to seek redress for the government's mismanagement of tribal trust funds. We are equally appalled and disturbed about this aspect of the trust fund mismanagement scandal. We therefore support the good work of the Intertribal Monitoring Association. We also support the testimony given today by Eric Davenport, who chairs and leads the important work of ITMA with respect to tribal trust funds.

We look forward to working with the ITMA and the tribes to bring a just and equitable end to this conduct which continues to unlawfully deprive us of money each day. Second, given the stereotypes about American Indians that seem to exist, it is important to note that the money we are talking about is our own money, both individual and tribal, as the case may be. This Indian money is derived from our own assets and it is not government money, nor did it originate from appropriated funds.

Third, I want everyone to know that the lawyers in this case will not accept contingency fees. Fully 100 percent of the recovery in this class action lawsuit will go to the individual Indians who are losing their money every day at the hands of the Federal Government. Further, I want to make it clear that private funds are being used to support this effort.

Fourth, I want to affirm that we bring this litigation as a last resort. As noted, the Executive Branch and Congress, as well as independent auditors, have repeatedly indicated that the trust fund management system is hopelessly broken. Successive Administration, both Republican and Democrat, have admitted that there are serious problems and abuses with the management of Indian trust moneys.

In this sense, the responsibility is bipartisan in nature. Notwithstanding, each successive Administration, including the current one, has refused outright to remedy the problem. No Administration has ever come close to asking Congress for adequate dollars to fix the problem and Congress has always cut back the Administration's terribly inadequate funding requests.

To make a long story short, we are in court because we have been unable to persuade the executive and Legislative Branches of government to honor the United States' solemn trust and legal obligation to 300,000 individual Indian trust account holders. The defendants in the lawsuit are the Secretary of the Interior, Assistant Secretary of Interior for Indian Affairs, and the Secretary of the Treasury.

It is on their watch that the problem goes unabated and continues to be swept under the rug. The suit asks the court to order the defendants to follow the law, fix the system, provide the account holders with an accounting, and make restitution. We further seek to assure that the Special Trustee has all the tools he needs to fix the system to get the job done right just like Congress mandated when it enacted the Trust Fund Management Reform Act of 1994.

I will now briefly address the Federal Government's trust responsibility, the nature of the individual trust accounts, and some aspects of how the government has grossly breached its trust responsibility to over 300,000 individual Indians.

There are more than 300,000 Individual Indian Money accounts with a total balance of about $450 million. The IIM accounts are invested as a single pool. The bulk of the funds in the IIM accounts is derived from income produced from individual land allotments. In addition to the $450 million held in these IIM accounts approximately $250 million flows through them each year.

The IIM account holders, most of whom are poor, need their money for basic subsistence. I want to explain the nature of the government's fiduciary duty in the management of trust funds. Briefly stated, the Federal trust responsibility imposes traditional fiduciary standards on the conduct of executive agencies and officials in administering Indian assets. Federal officials are required to exercise due care and are held to the most exacting fiduciary standards.

They are further held to moral obligations of the highest responsibility and trust. Courts also require Executive Branch officials to adhere to the ordinary standards of a private fiduciary when managing and administering Indian assets. This includes Indian trust funds.

With regard to trust fund management, the Executive Branch agencies and officials hold certain duties to the account holders as trust beneficiaries. In the case of the 300,000 IIM account holders, the Federal Government breached every one of its duties, including the duty to maintain adequate books and records, the duty to maintain adequate systems and controls to guard against error and dishonesty, including an accurate accounts receivable system, and separating the billing and collection functions, the duty to deposit trust asset receipts, and safely and soundly invest these funds, the duty to account regularly and accurately to the beneficiaries, the duty to distribute the earned income to the proper Indian beneficiaries, and the duty to refrain from self-dealing and benefiting from management of these trust funds.

As a result of breaching these duties the Federal Government has no idea how much IIM money it has, how much IIM money it should have, how much IIM money it has lost, or how much IIM money that could easily be and may be stolen every single day. The

government's trust fund system is in such disarray that the Arthur Andersen accounting firm would not even attempt to reconcile the IIM accounts.

In fact, the Andersen firm estimated that it would take at least $108 million to $281 million just to attempt to reconcile the IIM accounts. Even that would be likely of no value in providing the IIM account holders with assurance about the correctness of the account balances. Indeed, at the special hearing before the Senate Committee on Indian Affairs on June 11, 1996, Special Trustee Homan testified that the IIM account system was "as bad or worse" than the tribal trust accounts.

Notwithstanding the Department of Interior has no plans or money to do historical accounting regarding the IIM accounts. The longer it waits and continues to violate the law, the more expensive it will be to fix the system and the greater the government's liability will be to tribal and individual account holders who are being forced to pay the price for the government's breach of trust and the price goes up every day.

The resolution of this crisis is the joint responsibility of both Congress and the Administration. It is likewise the joint responsibility of both the Republican and Democratic parties. As we have indicated, one of the major problems preventing system reform is the routine lack of adequate appropriations. In short, the Special Trustee's hands are tied due to a lack of funds and resources.

It will take an additional $22 million in fiscal year '97 to begin to satisfactorily reform the trust system as it relates to the IIM accounts. Without this minimal amount, the government could be paying substantially more to correct the staggering losses that are hitting these 300,000 individuals every single day.

We respectfully urge the Task Force to do everything it can to insure that the Special Trustee receives the $22 million in fiscal year '97 which he needs to fix this system as it pertains to the IIM accounts so that he can do the job Congress required him to do when it passed the 1994 Act. That concludes my testimony, Mr. Chairman. I will be glad to take questions later.

[Prepared statement of Mr. Echohawk may be found at the end of hearing.]

Mr. HAYWORTH. We thank you for your comments, Mr. Echohawk, and now we will turn to Ms. Cobell.

STATEMENT OF ELOUISE C. COBELL, MEMBER OF ADVISORY COUNCIL TO SPECIAL TRUSTEE

Ms. COBELL. Mr. Chairman, members of the Task Force, thank you for letting me testify today before you. I would like to especially thank my Congressman, Pat Williams, for all the effort that he has put into establishing this Task Force. I also bring you warm wishes from the Blackfeet Indian Nation, and especially from our chairman, Earl Old Person.

I would also like to take this opportunity to thank you for all your work that you have done over the past 18 years and all of the issues that you have worked on for every Indian in this United States. We surely appreciate it, and I am going to tell you we are going to miss you very much.

When Congressman Williams introduced me, he forgot a couple issues that I thought that I ought to bring to your attention. When I was the treasurer of the Blackfeet Indian tribe in the '70's, the early '70's, when I became the treasurer it was then when I first discovered the mismanagement of what was happening within the Indian trust funds.

At that time I started writing letters probably to Pat and every Congressman and every Senator that I could to bring attention to the situation. I would also like to let you know that I am one of the lead plaintiffs in the class action lawsuit against Secretary Babbitt and others on behalf of 300,000 individual Indian account holders.

Another area that I would like to touch on is I was the lead organizer and serve on the Board of Directors of the Blackfeet National Bank, so when Congressman Williams talked about the standards the private financial institutions are held to, I can relate to that very much. And I will tell you the way our Indian trust funds is being managed is totally unacceptable as far as our standards.

Today I want to talk about the gross mismanagement of our funds. This is not a case of the government's mismanagement of its own funds, which is serious enough. It is the mismanagement of the money, land and assets of someone else's money, in this case some of the poorest and least educated people in the country. I want to deviate a little bit from my prepared testimony to just tell you a little story.

When our Trust Fund Reform Act was approved in 1994, many of the people that are in this room today deserve credit for, we were very ecstatic because we were on the road of reforming the systems. After the Special Trustee was selected and put into place I had the opportunity to accompany him to four Indian Nations in Montana. We went to those Indian Nations and Mr. Homan wanted to let the beneficiaries meet him and explain his role and to me that was the first time that anybody had really made a concerted effort to go out and talk to the beneficiaries.

But as we were driving by some of the areas I could tell that Mr. Homan was struck by the poverty, the poverty that existed in our Indian communities and we were going by one little settlement and it was quite poor and he commented to me, and I told Mr. Homan, I said, you know, I bet if we were to drive in to that driveway, pull up to that little house with clothes hanging on the clothesline blowing in the wind and the children playing out front and a couple cars around in front, the very first thing that would happen is they would invite us in, and if it was their last piece of food in the house they would offer it to us to eat because that is our way.

And so with that I want to talk a little bit about the purpose of Title III of the Trust Fund Reform Act that established the Office of the Special Trustee. His assignment is to insure that the trust funds and trust asset systems are brought into compliance with the basic trust standards and to assist in bringing to the closure of the historical reconciliation and accounting for tribal and IIM accounts.

In his first year he was ordered to, according to the Act, prepare a comprehensive strategic plan for making necessary improvements. Upon receipt of the plan Congress and/or the Secretary was to address the questions of the reorganization and to look at the

well thought out plan. Under the Act his plan is due on September 31, 1996, a year from the date he was sworn in.

He will not be able to meet this date because the Secretary and the Congress have failed to give him any resources which would develop this plan. The purpose of the Special Trustee title was to provide the Department with three things it has been lacking and that had contributed to the continuation of this outrageous problem for 100 years, even though it has been known to every Secretary and every Congress over that period of time.

First, he would provide expertise in the trust fund management since historically the high-level officials and the Department tasked with making decisions regarding trust funds has little or no experience in trust fund management. He would also provide continuity so that the efforts of the trust fund reform would not be put on hold for 18 to 24 months every four years while a new Secretary tried to get up to speed on this complex issue.

And, thirdly, he was to be the official with a single focus on this, and exclusive loyalty to the trust beneficiaries. This is the fiduciary responsibility of every trustee, but in the Department trust funds are just another program whose interests have been sacrificed for the benefit of other programs.

Congress believed that it would be unwise to give him direct operational authority over any functions until he had a plan in place. Otherwise, he would be overwhelmed by the day-to-day problems that he would be unable to focus on in his plan. It was also concluded that no effort should be made to move the program out of the BIA or the Interior until it had been fixed, since moving it while it was broken would simply dump the problem somewhere else.

Today, 20 months after the Act was signed into law, and nine months after the Special Trustee was sworn in, I believe the Secretary has refused to use the Special Trustee as intended, has severely undercut his ability to carry out his mission and has shown that to be successful the Special Trustee needs independent authority.

The problem goes deeper than Secretary Babbitt. It is a well-known principle that management of a broken down company cannot be expected to reform itself or the company that is mismanaged. In keeping with that principle, it appears to be institutionally impossible for a political appointee like the Secretary with responsibility for numerous programs to put his legal obligations as trustee ahead of his political and programmatic preferences. In addition, Congress has failed to provide the Special Trustee with the resources he needs to do his job.

To walk you through the past year's events, the Special Trustee was sworn into office on September 21, 1995. He was and continues to be everything the account holders and Congress had hoped for when the Reform Act was being considered. He is experienced in the trust funds, has a successful history of turning around troubled financial institutions, believes he has the legal obligation as trustee that the courts have placed on the United States Government, and is a strong executive.

In the President's budget as we heard earlier it only provided $447,000 for the Special Trustee. That barely covered his salary

and the deputy and the secretary. It left no money with which to prepare the strategic plan called for in the Act. The Special Trustee as you heard from him today asked Congress to provide the money through a supplemental appropriation. Congress said to go get it from the Secretary.

And as we know and we heard earlier, we know what happened with that. The Secretary did not give him any money. This continues to be the problem. It seems to be that we are running around in circles and everybody is pointing the finger at each other, either go get it from Congress, Congress does not have the money, go cut it from the other programs. I do want to make a plea especially to this Task Force when you approach the Appropriations Committee is that you make sure that they do not reprogram the money out of our Indian programs. I am very concerned about that.

In a specific case where we had known that there was money missing out of the IIM pool and went to the Appropriations Committee and asked that that money be replaced, we were told that do you want the money back in the IIM pool or do you want your children to go to school. So I want to make sure that that does not happen, that you do not reprogram that money that is needed so badly in our Indian communities.

I also would like to talk a little bit about our role as the advisory board. Sitting here today by me, Mr. Eric Davenport, Chair of the Intertribal Monitoring Association, and one of my favorite associations and organizations since I was involved in it from the inception. It is a very important organization. For the first time tribes have a voice on their trust funds. For the first time. And we had to fight hard to stay involved and be part of the solutions on how our money was to be managed.

And I also would like to talk about the importance of the advisory board to the Special Trustee. Our job is a totally different role than the Intertribal Monitoring Association. Our job is to see that the Trust Fund Reform Act is implemented properly and that the Special Trustee bounces all of the implementations and the solutions and the needed amendments that have to happen with the Trust Fund Reform Act off of the board.

The board is made up of five tribal leaders. We have other very professional people that are going to be sitting on the board and helping the Special Trustee implement this Act. I would also like to ask you, and I guess I have heard from most of the conversation this morning, is that we would like to add $22 million to the budget to help fix the systems especially focusing on the IIM system and it is my understanding from listening to the conversation within the Task Force that will either have to be done in conference or within the Senate, but I do beg and plead with this Task Force to give us as much support that you can to fix the systems.

I also feel that this Task Force has to definitely support and make whole the account holders that have lost in this terrible mismanagement over the 150 years. I would like to end by saying that I think that we can all work together. We need to work together. We need to provide the money that is needed to fix the systems, the over $100 million over the next three years. You have to make a commitment to work with us to make sure that we start fixing the systems.

I want to end by saying I hope that little story that I told you about stopping in and visiting the home in this Indian community that is very poverty stricken, but yet would give their last bit of food to share, is that you would also make the wrongs right. You would also have a way and maybe your way could be our way too. Thank you very much.

[Prepared statement of Ms. Cobell may be found at the end of hearing.]

Mr. HAYWORTH. Thank you very much, Ms. Cobell, and as I have listened to your testimony I noted the eloquence and the poignancy of the story of the Special Trustee visiting Native peoples. I also, as I read through your testimony, which of course will be included in the record, a disturbing tendency here. In other words, all you panelists lay out the paramount mission which is to adhere to the trust obligations as provided for within treaty law, and just as that is preeminent and responsibility that should almost be really involuntary as it is for each of us to breathe, not think about it.

That should be the central commitment. I know your testimony, Ms. Cobell, and especially disturbing tendency, and to be fair it exists both within the Executive Branch and within the Legislative Branch to a large degree, but I notice here a specific mention of the request made by the Special Trustee of Secretary Babbitt to find him more funding to the tune of $2 million and yet the Secretary could not find the money for this most essential role that the Federal Government should be playing in terms of treaty law and rights and obligations, but he could find the $2 million for emergency repairs on the C. & O. Canal.

Now a wise philosopher once said isn't it a shame that youth must be wasted on the young. I would share his lament to this degree. It is also a tragedy that policy must be predicated upon politics and yet I see this type of action and I believe it is imminently fair and desirable to ask all three panelists, beginning with you, Ms. Cobell, is it not also reasonable in terms of trying to deal with this that the Secretary be compelled in that rather considerable budget of billions of dollars that the Secretary be compelled because of this egregious situation to allocate more of existing funds to remedy this situation.

Ms. COBELL. I would say that this has to be the top priority of the Secretary. I believe that the Secretary has not put this as the top priority. What I am worried about with your question is that to go out and find the $2 million that it definitely should not come from our existing Indian programs. I am sure that there probably is other fat in the budget of the Department of Interior. I am not aware of what that budget—where the money is.

I do want to make sure that Congress though understands that there has to be more than $2 million appropriated to fix this system, that you are going to have to deal with the real tough question is bite the bullet and allocate some good money to this to fix it. And I guess the priority was to fix the C. & O. Canal versus give some money to fix this formidable problem. You know what my answer is.

Mr. HAYWORTH. Thank you. Mr. Echohawk.

Mr. ECHOHAWK. I would hope that the court could be of some help in this regard by ordering the Secretary to come up with mon-

eys sufficient to do the accounting and to do that from whatever moneys were available to him within his Interior Department budget. Of course, that whole process could be expedited though by sufficient appropriations specifically earmarked for that purpose. Congress, of course, could in fiscal year '97 and that was how I concluded my testimony. Again we are hoping here that we will have a bipartisan effort, both Democratic and Republican, an effort on behalf of both branches of government, Executive and Legislative, to come up with the funds that everybody acknowledges are necessary to fix the problem. It is just kind of a matter of how we get that done.

Mr. HAYWORTH. Mr. Echohawk, J.D. in my name does not stand for Jurist Doctor. I am not an attorney, a lawyer. We are just here making the laws. And that is the way it should be. The Fathers didn't name this the House of Attorneys. But with your knowledge of the Constitution and of the trust funds and what role the Congress can play, in your mind is it within the rights of the Legislative Branch to compel the Secretary to use his funds in such a way as to make this his top priority?

Mr. ECHOHAWK. Yes, I believe it is within the power of Congress to do that.

Mr. HAYWORTH. Mr. Davenport, your remarks were both most welcome and most disturbing for as you mentioned it is your assessment that this $2.4 billion, I may be quoting now from my memory, is just the tip of the iceberg. Would you revisit that for me in terms of the financial problems that may exist here and why you say it is just the tip of the iceberg?

Mr. DAVENPORT. It is the tip of the iceberg because the $2.4 billion is the derivative of the $17.8 billion of non-investment transactions that occurred during that 20-year period. And that is what was not reconcilable. They did not even look at the $200 billion in investment transactions, so they have not looked at roughly 10 percent of the total activity during that period and out of that 10 percent of total activity they found $2.4 billion that was unreconcilable so when we begin to expand that and look at it then you begin to see that the scope of this issue is much, much broader.

The other fact gets to the fact that the trust assets in terms of minerals and oil and gas and coal and so on, as we talked about with MMS and BLM, has not been addressed. Huge assets out there. We know that in some cases that tribes—the documentation on lease documents, only 50 percent of them are there.

When they, being Arthur Andersen, were going through and looking for a universe of leases to examine at a particular tribal site and if they needed to get 100 leases and they had a box there once they started going through these different records, if they did not find all of the records in one particular file folder they would go to the next one or the next one or the next one until they found one that was complete and then they tested it, but never noted the fact that the earlier ones were absent of necessary materials to reconcile.

So once we begin to distill this and bring this together you can see that the $2.4 billion deals only with non-investment transactions for that period of time and there is much, much more out there.

Mr. HAYWORTH. I thank you. I would yield to my distinguished colleague, the ranking minority member, Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. I want to thank the witnesses. I have always known that the sovereign relationship does not exist just in the Executive Branch, it does exist with the Congress, and I am glad you reminded us of that this morning too that we cannot shirk our responsibility, that the sovereign relationship is with the entire U.S. Government. We have to make sure that we recognize our role in that.

And that is the most important element in this whole thing, that sovereign to sovereign relationship; and I certainly want to make sure that I as a Member of Congress and a member of this Task Force and Member of this Committee do not try to pass the buck onto just the Executive Branch. We have an obligation, and, Mr. Echohawk, I appreciate your bringing that clearly to our attention.

I think that the handling of the Indian trust funds is another element of our shameful record of our relationship with the Indian people, the sovereign Indian tribes, the sovereign Indian Nations. It has not been a good record at all. I came to Congress 20 years ago and got involved in Indian matters. It was a record of injustices. Prior to that serving in the State legislature I read the treaty of Detroit. I commended the Indians to read the treaties. It was a treaty between sovereign to sovereign, entered in good faith, sometimes not too willingly, but signed by the chiefs there in Michigan at the time in Detroit.

If we were handling Nicaragua's money it would go to the world court. This is a terrible handling of money. We are handling money really that belonged to the sovereign tribes and sovereign Nations and we have done a miserable, miserable job on it. And Congress has a responsibility to try to find a remedy for that. Not just a prospective remedy, but I think we ought to go back and see what money had accrued to the Indian Nations and tribes and was lost to them.

I really believe that. We spend a lot of money around here, but I think to address injustice is a very, very important thing. Mr. Echohawk, you say in your testimony that you asked the court to order the defendants to follow the law, fix the system, provide the account holders with an accounting, and make restitution. Do you have any idea or don't we know just what the dollar amount might be in that restitution?

Mr. ECHOHAWK. Congressman, I think at this point we just do not know. I think we, of course, need to start with the accounting and, of course, it is through that process that we will come to find out what that number is.

Mr. KILDEE. You also indicated in your testimony here in 1987 the Department of the Treasury destroyed all of its records pertaining to IIM accounts and continues to destroy records each year. Is that a matter of public record, the destruction of those records?

Mr. ECHOHAWK. Yes, I understand that it is.

Mr. KILDEE. Mr. Chairman, I think that we should probably through our Chairman of the Full Committee, but we should seriously consider contacting the Treasury Department and asking—this is not good fiduciary responsibility. As Mr. Homan announced that banks generally keep their records for perpetuity. And when

you start destroying records, one wonders why one is destroying records.

I think we should really pursue, Mr. Chairman, in some way, maybe contact the Chairman of the Full Committee, and, first of all, ask the Treasury Department why they have done that, and I think we should also tell them that we insist that from this day on they not destroy any more records. And if you would pursue that with the Chairman of the Full Committee, I think that might be very helpful.

Mr. HAYWORTH. The gentleman from Michigan makes an entirely valid point and I think that is the very least this Task Force could do immediately, contact the full Chairman. I will simply note this is far more egregious than any 18-minute gap on a recording tape of the White House or any 341 FBI files that end up mysteriously under the direction of the current Administration.

This is absolutely inexcusable. It defies logic and my friend from Michigan is absolutely on target that we need to move to restore what is an elemental concept here of fiduciary responsibility so I stand shoulder to shoulder with my colleague on the other side of the aisle in this regard. We will contact the full Chairman. We will also contact the appropriate folks within the Administration with reference to what has transpired at the Treasury in this regard.

Mr. KILDEE. I appreciate that, Mr. Chairman. I think again that very often when people look at Congress they think that we are constantly feuding, Democrat and Republican, but there are things that so cry out for justice, and you and I have been working on this and other Indian issues since you came to Congress this term, that partisanship goes out the window and I think that this is really more than sloppiness. This is something that I think cries out for justice. I would formally request that and I really appreciate your support for that.

Mr. HAYWORTH. I thank the gentleman from Michigan, the ranking minority member, for his observation and his suggestion. Mr. Davenport, I believe you had a point you would like to add.

Mr. DAVENPORT. Yes, I do. I want to be sure and get on the record the fact that in the testimony of the panel prior to us there was a statement made that there was no fraud involved or something that alluded to the fact that there was no evidence of that in the Reconciliation Project, that it really was not their scope as they were doing their work.

But the reality of the matter is that there have been—there has been fraud and there have been people convicted as it relates to this. And that is one of the reasons I wanted to have Mr. Harrison here who has much more knowledge on this particular issue, but the Committee needs to know that this whole—the purview of this issue is not absent of people going to jail, is not absent of the fact that there has been theft and it has been documented.

Mr. HAYWORTH. To follow up on that line then, Mr. Harrison, do you have both anecdotal and empirical evidence you could provide to this Committee of such abuses?

Mr. HARRISON. Yes, Mr. Chairman, we do. With respect to Mr. Kildee's previous question there was in the President's budget request for this fiscal year a request for $12.5 million to make whole one such instance and the Congress did not see fit to approve that

request, but it is one of the issues that Ms. Cobell and Mr. Echohawk are now suing over, I suspect.

But we know for a fact, and we can provide the Committee with depositions from the court case, I might point out here that at least it is our view and I guess maybe I should say my view, that the government has still not been particularly forthcoming about instances or incidents which might result in liability on their part.

This particular case we uncovered ourselves as a result of going through court records in a courthouse in Kansas City from a case many years ago, but the government actually did put people in jail for bilking the trust fund office out of several million dollars, but they never told us about it. Their bookkeeping allocated what funds were recovered to those accounts from which it was likely to be missed.

The more than $5 million or so that was not recovered were allocated to the individuals spread across 300,000 individual Indian accounts and no mention was ever made of it and had we not uncovered it at that time under Elouise's leadership, had we not uncovered it we would not have been told about it to this day and I suspect neither would you.

But having uncovered it, they did calculate the lost interest to date as of the beginning of this fiscal year and they did make a request to Congress for funds to restore that, but it was not appropriated, so this is merely one incident but going to Mr. Kildee's question there is at least $12.5 million we know about because they have acknowledged it, calculated it, and asked for it.

And we also know that there have been other instances where people have been prosecuted for pilfering these funds and we will be happy to provide the Task Force with whatever documents we have on those situations. I might point out, Mr. Chairman, that your newspaper a few years ago, the Arizona Republic, reported that there was an account in Oklahoma through which more than $600,000 had been disbursed and the name of an individual that nobody had ever heard of. And so far as we know there has been not much effort made to follow up on that.

Mr. HAYWORTH. I think the points are well taken, Mr. Harrison, although I do not always agree with the Arizona Republic newspaper. In this instance I think it is something that bears more research. We appreciate your diligence in that regard. We would also appreciate the written documentation which you have compiled to bring before this Task Force so that we might continue to try and deal with this problem.

And I might also say that I know speaking for both the ranking minority member and myself and other members of this Task Force, we appreciate your tenacity because what is emerging here, and I say this free from hyperbole and the theatrics that unfortunately often accompany these types of hearings, but indeed what gives us all pause and cause for concern is that it appears a climate has developed where the perfect crime could be pulled off, the heist of the century.

And it is extremely disturbing and so we will move within this Task Force and given our limited scope then within the Full Committee to try and redress this. One final question for Mr. Echohawk. With reference to the suit that has now been filed, will

the suit end up putting a Federal judge in charge of the day-to-day operations of the Office of Trust Fund Management?

Mr. ECHOHAWK. I would hope not. I would hope that the Secretary would find a way hopefully with the cooperation of Congress to provide the funds to the Special Trustee for him to do his job and so we will basically see the '94 Reform Act carried out, but if somehow there is difficulty in getting the Special Trustee equipped to do his job financially, then there may be some continuing oversight by the court to make sure the Secretary inch by inch, dollar by dollar, provides that accounting, yes.

Mr. HAYWORTH. And, again, given the proclivities of many who sit on the bench in recent remedial actions taken by various judges, it is not far afield to assume that this in fact could happen?

Mr. ECHOHAWK. Possibly so. I believe the court will basically enforce the law and make the Federal Government provide the accounting that is due and the court will do whatever it has to to make sure that happens.

Mr. HAYWORTH. Thank you, Mr. Echohawk. Mr. Kildee, any other questions?

Mr. KILDEE. I want to thank the witnesses. I think you come to us seeking justice and, as I say, we are part of that—there are two sovereignties, we are part of the one sovereignty and we have to assume our responsibility. And I think your testimony not only gave us information which is very important, but gave us hopefully some inspiration to follow through hard on this. Thank you very much.

Mr. HAYWORTH. Thank the ranking member and the panel. We thank you very much for your testimony and we know we will be visiting again, and again invite you if your schedules permit to stay and to hear from our friends in the General Accounting Office on their perspectives. We thank you very much.

Welcome, Ms. Calbom, and the others with her from the General Accounting Office. Linda, if you would, please introduce those who accompany you today.

STATEMENT OF LINDA CALBOM, DIRECTOR, CIVIL AUDITS, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY GAYLE FISHER, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, AND TOM ARMSTTRONG, OFFICE OF GENERAL COUNSEL

Ms. CALBOM. Yes. Mr. Chairman and Congressman Kildee, I have with me here today Gayle Fisher from our Accounting and Information Management Division who has worked in this area for a number of years, as well as Mr. Tom Armstrong from our Office of General Counsel, who also has been very involved in these issues over the years.

We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds. My statement summarizes our assessment of Interior's efforts to reconcile Indian trust fund accounts, discusses the Secretary's May 31 report to the House Resources Committee on trust fund reconciliation results, and provides information on the status of Interior's trust fund management improvement initiatives

which of course are needed to ensure that the trust fund accounts will be accurate going forward.

In the interest of time, I know everybody is probably hungry by now, I promise to keep my comments to no more than five minutes——

Mr. HAYWORTH. Linda, you would not be talking about the preponderance of physical evidence of the Chairman of the Task Force? Forgive me.

Ms. CALBOM. But I do ask that my full statement be submitted for the record.

Mr. HAYWORTH. Without objection.

Ms. CALBOM. Thank you. As discussed in our report issued last month, while Interior has brought its Reconciliation Project to a close, tribal accounts could not be fully reconciled due to missing records and the lack of an audit trail in Interior's accounting systems. In addition, the report package that Interior provided to tribes in January of this year did not make evident the limitations of the reconciliation process.

For example, nowhere in the package did Interior describe the numerous changes in reconciliation scope and methodology or the procedures that had been planned, but were not performed. Further, due to cost considerations and the potential for missing records, individual Indian trust fund accounts were not included in the Reconciliation Project.

As you can imagine and as we have heard here today, tribes have expressed concerns about the scope and results of the reconciliation process. As stated in the Secretary's May 31 report, by April 30 only two tribes had accepted their reconciliation results, three tribes had disputed their results, and the remaining 275 tribes had not decided whether to accept or dispute their account balances.

If Interior is unable to resolve tribes' concerns about the reconciliations, a legislated settlement process could be used as a means to resolve disagreements about tribal account balances. Our September 1995 report contained draft legislation outlining such a settlement process. We prepared this report at the request of the House Committee on Resources and the Senate Committee on Indian Affairs to initiate discussions on options for resolving disputed balances.

However, the unreconciled accounts are only a symptom and not a cause of Interior's trust fund management problems. While Interior has initiated several management improvement actions over the last three years, the needed improvements will take years to complete. In the meantime, the current trust fund management and accounting systems and controls remain inadequate to ensure accurate trust fund accounting and asset management.

Unless Interior corrects its longstanding weaknesses in these areas it may be faced with additional costly reconciliations and settlements in the future. The appointment of the Special Trustee for American Indians was an important step in establishing high level leadership at Interior for Indian trust fund management. As you know, the Office of the Special Trustee was actually implemented in February of this year and the Special Trustee has recently devel-

oped a concept paper which outlines needed trust fund management improvements.

The concept paper is a positive first step, but will need to be expanded to include various options and alternatives and their associated costs and benefits and ultimately it will need to be developed into a comprehensive strategic plan. The bottom line here is that solving Interior's trust fund management problems will require comprehensive planning, management commitment across all Indian trust program offices and additional resources. That concludes my prepared comments. I will be happy to answer any questions that you may have at this time.

[Prepared statement of Ms. Calbom may be found at the end of hearing.]

Mr. HAYWORTH. Your May 3 report concerning your proposed legislated settlement process states that the settlement process could be used to resolve questions about IIM account balances. Now how would that work for IIM accounts when there has been no reconciliation whatsoever of the IIM accounts?

Ms. CALBOM. I would like to have Mr. Armstrong address that question.

Mr. ARMSTRONG. Of course, Mr. Chairman, with IIM accounts the starting point would be different than what we propose for tribal accounts. With the tribal accounts, we were keying off the reconciliation, but we felt that the structure that we provided, the process that we proposed, could be used for IIM accounts as well. It could start with the government sending IIM account holders a statement with the balance on it and then asking the account holders to agree or disagree with that balance.

Mr. HAYWORTH. Really a two-part question. One to follow up. Any cost projections of what that might be to send statements to the various IIM account holders?

Ms. CALBOM. We don't have cost projections, but I would not think that simply sending out statements—because we are not talking about embarking on another reconciliation process—would pose an exorbitant cost—to begin the process in that manner. However, that is probably a question better addressed to the BIA.

Mr. HAYWORTH. Let me ask about some preceding testimony. Mr. Davenport offered the very disturbing perspective that the $2.4 billion that currently cannot be accounted for is but the tip of the iceberg. Do you share that assessment?

Ms. CALBOM. I think what Mr. Davenport was addressing is a couple things. One thing is that the actual investment transactions were not specifically reconciled transaction by transaction. Instead, my understanding is the approach that the accounting firm took was doing more overall reasonableness tests by looking at yield analysis and investigating where the yield fluctuated more than they would expect it to fluctuate.

That kind of a test is a good overall reasonableness test, but it is not necessarily going to get you down to determining transaction by transaction whether things were properly recorded. The other major area, and we share this concern, is that the complete universe of transactions really is not known. What the reconciliation process was designed to do was to take information that had been

posted to the general ledger and try to trace it back to supporting documentation to the extent that documentation was available.

However, with leases, as we have been discussing numerous times today, there is no inventory of leases that are out there and there is no receivable system which tells you what you should expect to receive on a monthly basis so you know to go follow up if, in fact, the money does not come in. And I think that is one of the big problems as far as the accountability for these funds.

Mr. HAYWORTH. Gayle, the General Accounting Office as its name implies deals with so many different challenges, should we realistically say, and the discrepancies in the country across the board in terms of the Federal Government. It might be the time here that we have been made aware of a myriad of problems and challenges, if you will, faced by several different governmental agencies in the departments and to be fair again this institution itself, the Congress of the United States, specifically the House of Representatives, and we have had problems addressed by outside audits in that regard. Based on your experience, what you see here and perhaps what we fail to see because of the lack of a known universe—if you were to set up an alarm scale or some criteria by which we look at the magnitude of problems—in your field of experience, Gayle, does anything you have run across outrank the type of problem we are finding here—within this systemic mess—that we are finding with these accounts and the lack of accounting thereof?

Ms. FISCHER. While I have not audited every Federal agency out there, I know GAO has identified some serious problems with the Department of Defense and other agencies. But, this particular problem has been so longstanding and it involves money that is not Federal money but money that the government is keeping for others; that it cries out for a solution.

Mr. HAYWORTH. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Mr. Echohawk in his testimony indicated that since 1987 that the Department of Treasury had destroyed its IIM records. Could you comment on that?

Ms. CALBOM. Actually I would like to have Ms. Fischer go ahead and comment on that.

Ms. FISCHER. I was not aware until I saw Mr. Echohawk's testimony that Treasury had been accused of destroying the IIM records. I know there has been a problem with BIA keeping records over the years, the Mineral Management Service at Interior keeping records over the years, and the Federal records centers, but I was not aware of any evidence that Treasury had not kept the IIM records before this hearing.

Mr. KILDEE. What is good fiduciary action on keeping records like that?

Ms. CALBOM. Congressman, I guess my experience comes from not only the GAO here, but also being in public accounting in the private sector with one of the large accounting firms and I was involved in auditing a lot of financial institutions over the years and good fiduciary responsibility tells you that you keep 100 percent accuracy, which means you keep 100 percent of the records.

You have audits consistently. You resolve any discrepancies at the time. Discrepancies just are not acceptable in that kind of a role in the private sector.

Mr. KILDEE. You know, we talk about records lost. It seems to me records destroyed is another dimension. Records lost would be carelessness, but records destroyed, that is a specific positive action taken there, which I think gives this Task Force grave concern. That is why I have asked that we pursue that further. In the private sector you would not find that records were destroyed?

Ms. CALBOM. Well, you would hope not. I mean if that was the case certainly the fiduciary responsibility would be in question.

Mr. KILDEE. The fiduciary responsibility would be in question. Thank you very much.

Mr. HAYWORTH. We would like to thank you for coming before us today. Again, with the dimensions, scope, responsibilities of this Task Force, we may be checking back with you in the not too distance future and that indeed may be the understatement of the day; but we would like to thank not only this panel from GAO, but all those who have appeared today. And again I would like to thank the ranking minority member, the staff, and others associated with this Task Force hearing. We will continue our inquiries and our endeavor into seeing what we can do to make changes for the better. And with that, this Task Force stands adjourned.

[Whereupon, at 1:12 p.m., the Task Force was adjourned and the following was submitted for the reacord:]

PREPARED STATEMENT OF HENRY CAGEY

Mr. Chairman and members of the House Task Force on Trust Fund Management, on behalf of the Lummi Indian Nation, I am pleased to have this opportunity to submit a written statement to the House Committee on Resources and representatives of the Task Force on Trust Fund Management.

The Lummi Nation has reviewed the prepared statements and testimony submitted to the House Committee on Resources for the hearing held on June 18, 1996. We have grave concerns regarding the Federal Government's complete failure to uphold their trust responsibility to Indian people as the Trustee of Indian funds. Furthermore, it appears that the Federal Government's efforts to reconcile past negligent practices on the part of the U.S. Department of the Interior have proven futile. In a Recent class action lawsuit filed by the Members of the House Task Force on Indian Trust Fund Management, Against the Federal Government, Indian people are understandably alarmed that the Task Force Members were forced to take such drastic measures to protect the interests of Indian people.

The testimony presented to the Committee substantiates that the Executive Branch has taken insufficient action to implement corrective procedures. The Congress has not been supportive of the Executive Branch to provide sufficient appropriations to ensure plans can be implemented to reconcile the differences in the trust fund accounts. The Department has utilized vacancies in trust fund management positions to place unqualified employees into positions to oversee Indian trust funds because the Congress has forced a "downsizing" of the Bureau of Indian Affairs. Testimony from the U.S. General Accounting Office observations stated "a lack of comprehensive planning, lack of management commitment across the organizations, and limited resources—have impeded Interior's progressing correcting longstanding trust fund management problems." These are just a few of the gross, but accurate examples of how the Federal Government has failed to acknowledge the seriousness of this matter.

There are documented examples of bureaucratic negligence surrounding the trust responsibility obligations of the United States for Indian people. Instead, the Department of Interior continues to conduct "business as usual" under the guise of being the custodian for the welfare of Native peoples; a *facade* that is about to be unveiled a process that has never worked for the benefit of Indian people.

While there has been an interest over the years to try and resolve these long standing problems, there seems to be no firm commitment to see that this is done.

This type of malfeasance and mismanagement would not be tolerated by the Congress or the Administration in any other area of Government. For example, when over hundred FBI records were alleged to have been violated by the White House personnel, immediate Congressional hearings were held, firings demanded, and resignations submitted. Congressional investigations into the business practices of the U.S. President's wife have cost millions of dollars even though she is not a public official of the Federal Government.

Meanwhile, no one seems concerned about the gross negligence of the Federal Government and the mismanagement of many hundreds of millions of dollars of tribal trust assets. To this day, no one has been brought to account for the blatant violation of sacred trust committed by the United States in the misappropriation of the trust assets that are the rightful property of hundreds of tribes that comprise the most impoverished segment of the population.

The United States has become the quintessential abusive, negligent guardian in the trustee relationship between our respective governments. As in any abusive relationship, the parties being harmed must be removed from the relationship for their own protection. We agree that now is the time to resolve these long-standing problems, to correct this formula of neglect and condescension, and secure a commitment by Congress and the Administration to change the process. It is time to separate the Bureau of Indian Affairs from the Department of the Interior, with all of its inherent conflicts of interest and its history of disinterest and neglect, in order to ensure that this issue does not, once again, descend into a State of disrepair and confusion.

We commend the efforts of Congress and the people that have dedicated their time to resolve this issue, and it DOES need to be resolved. The Lummi Nation would like to give further support to statements made by the witnesses at the hearing who have asked that the management of trust funds be separated from the secretary of the Interior. We would like to see more separation occur than to make the special Trustee an independent authority.

There needs to be action taken to change the relationship between the Indian tribes, their peoples and the United States that advocates the fulfillment of the obligations of the United States. A separate department with a secretary at the cabinet level should to be created and be given the sole jurisdiction to deal with Indian Affairs exclusively. This will eliminate the inherent conflict of interest that now exists in many of the divisions of the U.S. Government.

The Lummi Nation is not the only Indian Nation of this opinion. Tribal leaders are prepared to come forward to present the congress with their ideas for such a change to occur and work with the U.S. Government to help improve the trust relationship with Indian Nations as the relationship was intended to be with Treaties, Executive Orders and Acts of Congress.

I thank you for the opportunity to present this testimony to the Committee.

United States House of Representatives
Committee on Resources
Task Force on Indian Trust Fund Management
Hearing on Indian Trust Funds Management

Testimony of Paul M. Homan
Special Trustee for American Indians
June 18, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. The hearings are focusing on the reconciliation report of the Secretary of the Interior, what it may take to resolve claims arising from past trust management practices, an interim report by the Special Trustee and what it may take to ensure sound trust management in the future. Each of these focal points is discussed in turn.

The Reconciliation Project

Let me begin by explaining how the reconciliation project came about. Although I was not present when the effort began, it is instructive to understand what brought us to the point where we are at today.

Beginning in 1987, the Congress began directing the Bureau of Indian Affairs to audit and reconcile Indian individual and tribal accounts. Language included in a FY 1987 Supplemental Appropriations Act prevented the outsourcing of trust fund services to a commercial bank (which was BIA's management initiative at that time) until the funds had been audited and reconciled and the tribes or individuals had been provided with an accounting of such funds. The Bureau of Indian Affairs previously had made two unsuccessful attempts to transfer portions of the trust fund operation to major private financial institutions.

Pursuant to these directives, BIA commenced its reconciliation project in 1990. In the fall of 1990, an ad hoc Tribal advisory group worked in conjunction with the General Accounting Office (GAO) and the Department's Inspector General to develop a request for proposal for the reconciliation contract. In May 1991, the contract was awarded to a national accounting firm, Arthur Andersen, L.L.P. The ad hoc group constituted itself as the Intertribal Monitoring Association (ITMA).

The results of Phase I of the contract disclosed that all supporting documents could not be located, but to the extent they could be located, they

could be examined. Because some records could not be located, it was resolved that an audit would not produce meaningful results.

In view of this, the Department of the Interior, in consultation with the Office of Management and Budget (OMB) and ITMA, considered alternative methodologies and approaches with the goal of producing as accurate an accounting as practicable. As a result, the BIA modified the Arthur Andersen contract to incorporate the agreed-upon procedures methodology, which does not constitute an audit in accordance with generally accepted auditing standards, but was used to reconcile the Tribal trust fund accounts back to 1973. The reconciliation did not address IIM accounts because it was determined that a similar reconciliation effort for IIM accounts would cost somewhere in the range of $108 to $281 million.

While the BIA reconciliation efforts were ongoing, in 1994, Congress passed the *American Indian Trust Fund Management Reform Act*, 25 U.S.C. 4001-4061, which established the Office of Special Trustee. The statute also requires that the Secretary transmit to Congress by May 31, 1996, a report that describes the methodology and results of the trust fund reconciliation process, includes Tribal attestations as to disputed account balances, and outlines efforts the Secretary will undertake to resolve such disputes.

Because of the due dates established in the Reform Act and because of funding reductions, the Bureau ended reconciliation efforts in December, 1995. As a result, several planned procedures were not completed or not commenced.

Summary of Findings

BIA examined $17.7 billion of tribal trust fund non-investment transactions for the twenty-year period from July 1972 through September 1992. A total of 86 percent or $15.3 billion of those transactions were reconciled. For the $15.3 billion in reconciled transactions, there was an error rate of .03%. In most cases, the errors consisted of mispostings within the accounts held by a particular Tribe. That is, either the wrong amount was posted to a particular account, an amount was posted to the wrong account of a particular Tribe, or was posted to the wrong Tribe.

The press has reported that the reconciliation found that $2.4 billion of

Indian trust funds cannot be accounted for by the Bureau of Indian Affairs. These conclusions are misleading.

The $2.4 billion figure represents the dollar value of the 14 percent of transactions examined for which BIA could not locate the supporting financial source documents. In other words, there are $2.4 billion of "unreconciled" transactions: transactions that are recorded in the general ledger and posted to tribal accounts but for which back-up documentation to support the general ledger entries is lacking. It may be that additional documents could be found to support the general ledger entries. However, additional searching was precluded by the time and funding constraints imposed on the reconciliation. In many cases documents were unavailable because they were destroyed pursuant to the document retention policies followed by the Federal Records Centers where the documents were stored, or were in unusable condition as the result of storage in BIA warehouses for which there was insufficient funding to maintain adequate storage conditions.

The $2.4 billion represents 13 percent or 32,901 of the total transactions examined in the reconciliation. Each transaction was recorded in a specific tribal account. The transactions can be better understood by breaking them down into receipts, disbursements, or internal transfers. A receipt is a transaction where funds are received and credited (posted) to an account. A transfer is a transaction where funds are transferred from one account to another account of a particular Tribe. A disbursement is a transaction where funds are paid out from an account.

The receipts, which total $1,123,315,969, are funds that were posted to tribal accounts, and were available to the owner of the account for use and were earning interest. Because the supporting financial documents (e.g., collection vouchers from grazing leases, deposit tickets from BIA Area and Agency offices, etc.) are incomplete or unavailable, we cannot verify that the $1.1 billion in receipts was accurately credited to the proper tribal account or to the correct Tribe. The transfers, which total $479,621,822, are transfers between a single Tribe's accounts. These funds are found in tribal accounts. However, we cannot produce all the documentation necessary to state

that the funds were transferred to the proper accounts of a single Tribe.

The disbursements, which have a gross value of $808,636,374 are better understood if they are divided into categories. For example, the total value of the disbursements includes so-called "positive disbursements" of $73.6 million. Positive disbursements are funds that were recredited to a Tribe's account, for example, in cases where the check was not cashed for some reason. In addition, the disbursements include some $39.0 million in attorneys fees from award settlements and $1.5 million in payments of expert witnesses related to award settlements. No attorneys or expert witnesses to date have said that they did not receive their fees. So, although the lack of supporting documents makes it impossible to verify to whom the payment was made and for what purpose, if one excludes the attorney and expert witness fees as the positive disbursements, the actual value of the disbursements is probably more accurately estimated to be $695 million.

Section 304 Report

Section 304 of the *American Indian Trust Fund Management Reform Act of 1994*, P.L. 103-412 (25 U.S.C. §4001, et seq.) (Reform Act of 1994) provides for the submittal of a report by the Secretary of the Interior (Secretary) to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate by May 31, 1996, regarding the reconciliation of Tribal trust fund accounts. The Secretary submitted the required report to the Congress on May 31, 1996 (Secretary's Report). Section 304 of the Reform Act of 1994 provides that the Secretary's report shall contain the following:

(1) A description of the methodology in reconciling trust fund accounts;

(2) Information on attestations by each account holder that they accept the balances in the account statements or that they dispute the balances along with the reasons for their dispute; and,

(3) The efforts the Secretary will undertake to resolve the disputes.

As the Secretary's Report indicates, tribal trust fund accounts were reconciled for the period of July 1, 1972 through September 30, 1992, by Arthur Andersen LLP using procedures in a contract with the Bureau of Indian Affairs.

The agreed-upon procedures methodology was followed after alternative methodologies and approaches were considered by the Department of the Interior in consultation with the Office of Management and Budget and the Intertribal Monitoring Association. Commencing in January 1996, each account holder was provided a report on the reconciliation of its accounts along with account statements that show account balances, reconciled transactions, and proposed adjustments. Each account holder was also provided account statements for the period of October 1, 1992 through September 30, 1995, which were reconciled internally by the Office of Trust Funds Management. In addition, each account holder was provided images on CD ROM of the financial documents reconciled by Arthur Andersen LLP. The imaged documents are Arthur Andersen LLP's actual working papers.

Subsequent to the distribution of the reconciliation report and account statements, a national meeting, to which all account holders were invited, was held in Albuquerque, New Mexico, to explain the reconciliation methodology and the report and account statement format, content and terminology. A series of five (5) regional meetings, of which three have been held, were also scheduled to work directly with each account holder to address questions and issues on its specific report and account statements. At the national and three regional meetings, account holders stated that they want their comments to be included in any report to the Congress.

Through April 30, 1996, 77 account holders have responded. Specifically, two account holders have accepted and three account holders have disputed their account balances. The remaining respondents have requested additional time and/or a meeting. Because all of the scheduled meetings have not been held to receive and discuss account holder issues and comments and since many account holders have not communicated their acceptance or dispute of their account balances, only an interim report on the account holder's attestation was provided in the Secretary's report.

Once the remaining scheduled meetings have been held and account holders have had an opportunity to communicate their reaction to the balances, a final report on account holder attestations will be submitted to the Congress. The

final report will be sent by November 15, 1996.

Methodology

The methodology used to reconcile the Tribal trust fund accounts consisted of agreed-upon procedures applied to specific elements, accounts or items of a financial statement. The agreed-upon procedures methodology was followed after alternative methodologies and approaches were considered by the Department of the Interior, the Office of Management and Budget, the General Accounting Office and the Intertribal Monitoring Association. The performance of the work and the reporting of the findings were governed by the Statement on Auditing Standards 35 issued by the Auditing Standards Board, American Institute of Certified Public Accountants. The work performed, however, is not an audit as defined by the American Institute of Certified Public Accountants because all the necessary financial records required to perform an audit could not be located. Consequently, the conclusions that can be drawn from the results can only be related to the records reviewed and cannot be applied to any unreconciled transaction. The specific procedures applied by Arthur Andersen LLP are described in its "Agreed-Upon Procedures and Findings Report of Independent Public Accountants" dated December 31, 1995. That report and a copy of a " Sample" report submitted to each account holder which demonstrates the report format, detailed description of the reconciliation methodology and the terminology used were attachments to the Secretary's Report.

Attestation

Distribution of the agreed-upon procedures report and account statements to account holders commenced in January 1996. The report and account statements were sent to 280 account holders. The whereabouts of nine account holders were unknown and distribution could not be made. Also, account statements were not sent to individual Indians that received a per capita distribution of Tribal trust funds.

To assist account holders in making an informed decision on the Agreed Upon Procedures and Findings Report and account statements, all account holders were invited to send representatives to a national meeting held February 14 and

15, 1996, in Albuquerque, New Mexico. At this meeting, the Office of the Special Trustee for American Indians and Arthur Andersen LLP discussed the methodology and findings resulting from applying the agreed-upon procedures and described in detail the format, content and terminology of the report and account statements. A demonstration on the use and content of the CD ROM was also provided.

In addition to the national meeting, a series of five regional meetings were scheduled throughout the country to provide account holders with individual consultation on their report and account statements. The first three regional meetings have been completed. None of the account holders attending these meetings accepted or disputed their account balances. The regional meetings schedule is as follows:

March 19-22, 1996	Sacramento, California
April 9-12, 1996	Portland, Oregon
June 3-7, 1996	Tulsa, Oklahoma
June 18-21, 1996	Billings, Montana
July 16-19, 1996	Albuquerque, New Mexico

In addition to the regional meetings, final exit conferences were held with four of the five Tribes that participated in the Five Tribes Pilot to discuss their individual report findings and account statements. The Five Tribes Pilot project involved the Hopi, Yakama, Flathead, Fort Berthold and Fort Peck Tribes and had two components. First, it used available records to reconcile the accounts of those Tribes on an expedited basis. Second, staff worked on site to compare the terms of the leases with the actual amount of cash collected. The Hopi representative only sought clarification of the Tribe's report, statements and the settlement process. The Tribe has not communicated a decision as to acceptance or dispute of their account balances. At the meeting with the Yakama Tribal representatives, we received a resolution from the Yakama Tribal Council that set forth measures to meet the local needs and priorities of the Tribe but did not directly address the account balance issue. A copy of the resolution was attached to the Secretary's Report. The Flathead Tribe advised by a formal statement (also attached to the Secretary's

Report) that they did not accept the account balances and requested meetings to attempt a negotiated settlement. The Fort Peck Tribe maintained their position that they would accept only a full accounting of their trust assets and that the reconciliation project was not sufficient. The full statement of the Assiniboine and Sioux Tribes of the Fort Peck Reservation was attached to the Secretary's Report. A final exit conference with the Fort Berthold Tribe is still pending.

Through April 30, 1996, 28 percent of the account holders that were provided a report and account statements have communicated with us concerning their account balances. Included with each account holder's individual report and account statements was an "Acknowledgment" form for the convenience of the account holder to communicate its acceptance or dispute of its account balances. Seventy seven of the 280 account holders that were sent report and account statements have responded by use of the acknowledgment form or other formal written communication. Specifically, two account holders have accepted and three account holders have disputed their account balances. Three of the 77 account holders only requested a meeting to discuss their specific questions or concerns regarding the report and account statements, but did not request additional time. Sixty-nine responded that they required additional time to review the reports and made no response as to acceptance or dispute of the account balances. Thirty of this latter category also requested an individual meeting to discuss their report and statements. The purpose of the regional meetings is to accommodate the account holders wishing individual meetings.

Dispute Resolution

Subsection 3 of Section 304 of the Act requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." As noted, through April 30, 1996, three account holders have disputed the balance of their accounts. Until the regional meetings are completed and the Tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department will not know how many Tribes will dispute the balance of their accounts. At that time, the Department will be in a position to

propose a mechanism to resolve any such disputes.

Special Trustee's Interim Report and What It May Take to Ensure Sound Trust Management in the Future

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which is attached to this statement.

The principles are conceptual in nature. The Special Trustee will continue to receive input from ITMA, the Advisory Board, affected bureaus within the Department, Departmental staff offices, tribes and tribal members, and the Office of Management and Budget as the conceptual plan is transformed into a detailed strategic plan as required under the American Indian Trust Fund Management Reform Act.

As noted, in December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the U. S. Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems

Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.

2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.

3. an audit under generally accepted auditing standards.

4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

2. An accounts receivable data and billing system that uses

lease-contract and land and ownership information.
This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.
This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

4. A land records and title recordation and certification system.
This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.
This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.
This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.
This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.
This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. An independent contractor was hired for the purpose of determining approximate costs associated with the development of the comprehensive systems overhaul just mentioned. Out of an abundance of caution, however, a requirements analysis, user needs survey and inventory must be completed before cost estimates can be completely validated and the comprehensive strategic plan completed.

The next step is therefore a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's budget request includes $1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary

to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is $36.3 million, a $20 million increase over the 1996 conference level of $16.3 million. The request includes $13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The $20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

In closing, I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. The problems in trust fund management have long been recognized by GAO, the Department's Inspector General, and others in Congress. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations, in conducting the massive reconciliation effort we are reporting on today, and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform

Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met. However, as you may be aware, the House Appropriations Subcommittee on Interior and Related Agencies made its recommendations on the 1997 request of the Office of the Special Trustee last week. The Subcommittee recommended a funding level of $19.1 million for OST for 1997. This is a reduction from the comparable 1996 resource level of $20.4 million and $19 million reduction from the President's Budget request. At the House mark, no funds would be available for OST to progress on research to clear past problems or implement improvement initiatives. Particularly problematic would be the failure to implement improved systems for the management of Individual Indian Money Accounts. Each day this system remains status quo, the Federal government's exposure to claims of mismanagement continues.

While the House provided funding for analyses necessary to complete the comprehensive strategic plan, no additional resources were provided for staffing which is also necessary to complete the strategic plan. At the funding level provided by the House, the strategic plan will not be completed in 1997.

This concludes my statement. I will be happy to answer any questions you may have.

TESTIMONY
OF
ERIC DAVENPORT, CHAIRMAN,
INTERTRIBAL MONITORING ASSOCIATION
ON INDIAN TRUST FUNDS

FOR THE
OVERSIGHT HEARING ON
MANAGEMENT OF INDIAN TRUST FUNDS

HOUSE TASK FORCE ON TRUST FUND MANAGEMENT

JUNE 18, 1996

Mr. Chairman and Members of the House Task Force on Trust Fund Management:

Thank you for providing this opportunity to appear before the Task Force to provide testimony on this issue of such vital importance to so many Indian tribes and individuals.

At this first hearing of the Task Force, the InterTribal Monitoring Association wishes to extend our appreciation to Chairman Hayworth and the 10 other Task Force members for your commitment to directing Congress' attention to the issue of trust fund reform. ITMA, on behalf of the tribal governments across the country who form our membership, stands ready to work with this Task Force and to be of whatever assistance we can be.

The Indian Trust Fund Management Reform Act of 1994 requires the Special Trustee to ensure that the Bureau of Indian Affairs provides trust fund account holders with "a fair and accurate accounting of all trust funds". After an expenditure of about $21 million and over five years of effort, the BIA contractor, Arthur Andersen and Company, has produced a reconciliation report which explicitly states that it is not "an audit made in accordance with generally accepted auditing standards". Arthur Andersen also does not express any opinion on the work elements of their reconciliation report. In view of these disclaimers and what we know

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about how the reconciliation was performed, we believe that the reconciliation report cannot be viewed realistically as meeting the requirement for a "fair and accurate accounting".

The initial scope of this reconciliation contract began as a broad effort to achieve reconciliation of tribal accounts, but for a number of reasons this objective could not be achieved. This contract was "officially" modified numerous times, and "unofficially" modified more than one hundred twenty (120) times by "issues papers." The resulting tribal reports are not what we were led to believe that they would be when we began this exercise. Instead, Tribes have very qualified, incomplete information of very narrow scope.

The reconciliation grew out of a BIA proposal in the mid-1980's to transfer much of the trust fund administration to a private financial institution. The tribes were concerned that the move would lock in their current account balances, which the BIA admitted could not be verified, and would bury the errors of the past. In response to the tribes' concerns, in 1987 the House Interior Appropriations Subcommittee instructed the BIA to conduct a reconciliation, audit and certification of tribal and IIM accounts before it contracted out any trust functions. The purpose of this was to be able to provide the account holders with reasonable assurance that their account balances were accurate.

After three years of delay by the BIA, the OMB Deputy Director for Management and the Comptroller took charge of the process. They quickly concluded that there was no point in asking Arthur Andersen to try to perform an audit. Based on the results of prior audit attempts, any audit would be so qualified that it would be of little value.

Instead, they settled for a package of those accounting procedures they thought could be accomplished, given the limitations imposed and given the absence of records and viable accounting systems. Like someone trying to fix an old car, they ended up taking bits and pieces from various procedures and cobbled them together into what has now been called "the reconciliation." In fact, it is an ad hoc set of procedures that does not fit into anything found in generally accepted accounting principles. As a

result, Arthur Andersen and the BIA have exercised broad discretion to create the processes they used in each area being reconciled.

As a result, over 90% of the reconciliation focused solely on whether entries in the general ledger for deposits and disbursements were accurately posted; that is, whether any clerical errors were made in copying information from one document to another. This procedure only covered the period from 1972-1992. In addition, some rough procedures were performed to check on deposit times and interest yields and only for the period 1978-1992. Nothing was or could be done in regard to the other elements of the reconciliation process because records were missing or never existed in the first place.

The reconciliation covered only the 2000 tribal accounts. It did not include the 300,000 IIM accounts or the special deposit accounts. After doing some scoping on the IIM records at three reservations, Arthur Andersen advised the BIA that an audit of IIM deposits and investments alone could cost in excess of $200 million to perform. Even then it probably would be of doubtful value in providing the IIM account holders with assurance about the correctness of their account balances. At the present time, the Department has no plans and no funding to do any historical accounting in regard to the IIM accounts.

The bulk of time and money expended by Arthur Andersen on the tribal accounts was devoted to trying to track a portion of the deposits and disbursements. This was called the "basic reconciliation", though actually it was more of a reconstruction of the existing records. It consisted of matching the deposit tickets sent in by the local BIA offices with the entries in the general ledger to see if the dollar amount of the deposit was accurately copied and if it was entered into the proper tribe's account. Arthur Andersen also matched the disbursement tickets to the general ledger. Thus, the process only caught errors by the clerk responsible for transferring the information from one document to the other.

The missing $2.4 billion that has been reported in the media represents the results from this matching process. All told, the general ledger showed there were $17.7 billion in deposits or disbursements to or from tribal accounts during the period 1973 through 1992. The BIA was

able to locate and match the disbursement or deposit ticket with the general ledger entry for $15.3 billion. Although there should have been a total of six different documents supporting each general ledger entry, an entry was treated as fully reconciled even if only one of those six documents could be located.

The missing documents that make up this $2.4 billion fall into three categories. The BIA was unable to locate deposit tickets, or any other confirming document, for $1.1 billion in deposit postings. This means that for $1.1 billion that was posted in the general ledger to the accounts of various tribes during this period, the BIA cannot confirm that it was posted to the correct tribe or that the amount posted in the general ledger was the same as the amount on the deposit ticket.

In regard to disbursements, for $845 million that the general ledger shows was withdrawn from the accounts of certain known tribes, the BIA cannot locate the disbursement documents and thus is unable to verify that the money was disbursed to the tribes from whose account it was withdrawn or that the disbursement was properly authorized. The BIA also lacked the documents to support $476 million in transfers between accounts of the same tribe.

For all of these non-reconcilable deposits and disbursements, there is no evidence that the money is missing. On the other hand, there is no evidence that the money is there or that it went to the proper party. The missing documents for all three categories were evenly spread out over the 20 year period. That is, as many documents were missing for the period 1987-1992 as for the period 1973-1978, showing that it was not simply a case of inability to locate 20 year-old documents.

Under the second major procedure performed by Arthur Andersen, called the "yield analysis", the reconciliation compared the average interest each tribe earned on all its accounts each year with the average earned by all tribes for that year. This all tribal annual average was called the benchmark. If a tribe's average was more than 2% below or 5% above the benchmark, Arthur Andersen examined the files to try to determine the source of the problem. However, the only problems it searched for and corrected through this examination were posting errors. It made no effort

to find out if the lower earning occurred because the money was under invested, such as by leaving it in short-term investments for an excessive period.

The reconciliation recomputed the interest earned on "cash", which was defined as money kept in Treasury before it was invested in government bonds or CDs. Arthur Andersen used 4% or 5% simple interest from 1978 through 1984. The interest could not be recomputed for the years 1972 through 1977 because revenue codes were not used by the BIA so it was not possible to determine what interest had been posted. The computation for 1978 through 1994 reported $2.4 million due to the tribes. However, this amount would probably be much larger if the missing years were included and if reasonable interest rates were used rather than 4% or 5%. This computation also excluded the "interest" accounts from 1978 through 1984 since the BIA did not pay interest on interest accounts.

To determine the potential lost interest because money was left in the form of cash for long periods of time, Arthur Andersen computed proforma interest calculations on cash balances at the BIA's average benchmark rates for 1978 through 1992. The results of this work was not reported for all tribes. However, the amount of this work for two different tribes was $212,000 and $426,000 additional potential interest.

Arthur Andersen also reconciled the investment system, Money Max, to the general ledger, which again, served to catch posting errors only. Posting errors were possible because the various BIA systems were unable to talk to each other, so data had to be transferred manually. This has now been corrected for the tribal accounts but not for the IIM accounts.

The results of the reconciliation of the investment system indicated $8.6 million due to tribes and $1 million due from Tribes for a net amount of $7.6 million due to tribes. During the reconciliation effort, five tribes were selected as "pilots" for the purpose of testing and adjusting the process. At several pilot tribes, Arthur Andersen tried to match deposit tickets to lease documents to see if the amount paid was the amount called for in the underlying lease document. However, it found that up to 50% of the leases could not be located. When Arthur Andersen tried to perform

such a match for all tribes on deposits in excess of $5000, again 50% of the leases could not be located.

The reconciliation determined the number of days receipts lay idle before being deposited. Approximately $273 million took 7 days or longer to be deposited. Over $28 million took over 30 days to deposit. No interest was computed for the delays. If the date of receipt could not be determined, the deposit was considered to be timely.

The final reconciliation report addresses each of these components individually, but never provides a summary that enables a non-accountant to grasp what was and what was not accomplished by this $21 million effort. Nor does it ever total the amounts due to and due from the tribes as a result of the various procedures performed. When totaled by ITMA as best we could, it is believed the report proposes adjustments of $24 million in favor of the tribes, that is $24 million is owed to the tribes by the federal government, and $21 million in proposed adjustments in favor of the government. These two numbers cannot simply be netted because a tribe that has money owed to it may not be one of the tribes that owes money to the federal government.

For several of the reconciliation procedures, the report identifies possible exceptions but does not propose actual adjustments in the accounts, such as interest for pro forma and deposit lag time as well as several other possible adjustments, so these amounts are not included in the final tallies. Instead, the report indicates that these data are provided for "informational purposes only." The report does not discuss how the $2.4 billion in missing reconciliation documents should be treated. Nor does it address the implications of the missing leases.

As limited as the reconciliation of deposits and disbursements was, the complete inadequacy of this process becomes even clearer when one considers the full context of the BIA's responsibility for Indian trust assets. For example, the reconciliation did not include an asset management review to determine if an asset such as grazing land had been allowed to be under utilized or overgrazed or whether mature commercial timber was not cut in a timely manner. Nor has there ever been a comprehensive asset review, though various Inspector General reports and Congressional

investigations have documented deficiencies in BIA's management of timber and other resources.

Without an accounts receivable system and with so many leases missing, the BIA is unable to tell the trust account holders whether all of the income due on their asset leases has been collected. The BIA collects approximately $250 million per year in asset income from tribal leases and $200 hundred million a year from individual Indian trust assets. We do not know whether this is the right amount, 90% of what should be collected, 50% or some other percentage.

With regard to the management of the trust funds investment portfolio, the BIA has a duty to obtain the highest return possible within the investment limits established. Here the limits are those established by 25 U.S.C. 161-162a. The reconciliation made no effort to determine if money was under-invested. In the yield analysis, all that Arthur Anderson did if it found that a tribe's yield fell below the benchmark, was check to see if there were any posting errors that were responsible for this. It did not check to see if a tribe was below the benchmark because money was under invested. No audit was performed to determine if investments were lost, held beyond the call dates, or otherwise handled improperly.

There is evidence that the BIA kept money in overnighters, at low interest rates, for inappropriately long periods, when most of the money should have been invested in longer term instruments. The Treasury paid the account holders 4% simple interest on overnighters, because the statute so provides. However, there is Federal case law holding that this 4% rate set by statute is a floor rather than a ceiling and finding the U.S. liable for the difference between 4% and what the market was paying for similar investments at that time. During at least a seven year period between 1976 and 1985, the average interest earned exceeded 10%, so it is likely that overnighters were paying in excess of 4% simple interest. In addition to failing to make the money maximally productive, the trustee benefitted at the expense of the beneficiary because the U.S. Treasury had the use of the Indian money at rates far below what it was paying to all other lenders. Arthur Andersen did not address this issue because it was outside the scope of its engagement.

The Department of Treasury cannot tell the BIA how much Indian trust money it has. While the deposit tickets documenting lease payments were sent to the BIA general ledger in Albuquerque, the money itself was deposited in the United States Treasury. A reconciliation of the Treasury accounts to the BIA general ledger is necessary to determine if money was deposited. The BIA knew it could not reconcile these accounts prior to 1987 because Treasury had destroyed all of its records prior to 1987. The BIA asked Arthur Andersen to reconcile the period 1987-1992. However, Arthur Andersen was able to reconcile only for 1992 because for the past 20 years Treasury had commingled trust money belonging to Indians with Federal appropriated dollars. Arthur Andersen was able to separate trust money from appropriated funds only for that one year.

The reconciliation process did not include oil and gas activities. Approximately $200 million a year is collected by MMS from oil and gas and other mineral leases on Indian lands and then transferred to the BIA's OTFM or paid directly to the tribes. No effort was made to determine if the payments reported by the lessees were accurate, whether the amount they paid was consistent with the rate called for in the lease, and whether the money was paid in a timely manner. All that Arthur Andersen did in the oil and gas area was to reconcile the MMS transfer documents with the entries in the BIA general ledger to identify clerical errors.

Mr. Chairman, I have presented all of this detail about the problems with the reconciliation report in the hope that it will help us all to understand that we still have a long way to travel before we can put the problems with the trust funds behind us. Let me also be clear in stating that many significant trust fund management reforms have occurred during the past five years. These reforms were possible because of Congress' support.

- The Office of the Trust Fund Management (OTFM) was reorganized, increasing the number of staff and the qualifications of those staff. This development better permits OTFM to perform many of the functions required by the Trust Funds Reform Act.

- An automated trust funds accounting system has been installed for tribal accounts. This allows OTFM to daily reconcile and post activities to tribal accounts.

- Appointment of Mr. Homan as Special Trustee, and the establishment of the Office of the Special Trustee provides the government a qualified trust management resource never before available to the trustee or beneficiaries.

- The 1994 Indian Trust Fund Reform Act provides a statutory infrastructure offering guidelines for future reforms.

Congress, Tribal Leaders, ITMA and the Special Trustee can take pride in these advances and at the same time feel great frustration in realizing that we are only partially there in terms of a trust management system even approaching those of the private sector.

The next steps in the reform process are not easy. They include:

- Centralized custodial services for securities held in the trust portfolio.

- An accounts receivable system to track, collect and account for funds derived from Indian trust assets.

- Automated accounting system for IIM accounts.

In addition, the Trust Fund Reform Act requires the Secretary to account for the daily and annual balance of all funds held in trust for an Indian tribe or individual Indian trust account holder. That responsibility is still not being fully met. This situation must be corrected as promptly as the resources can be made available to the Secretary for the necessary systems and personnel. The Special Trustee must have the additional resources necessary to accomplish the required management reforms. In particular, his fiscal year 1997 request to begin building the infrastructure required to accomplish the daily collection, investment, accounting, and disbursement of trust funds is critically important to the ultimate success of this effort.

Until these and other reforms are completed, the government's "breach of trust" to Indian account holders continues. In fact, until these reforms are achieved, the Department remains in violation of the provisions of the Trust Fund Reform Act.

The final issue I want to address today is the question of settlements. The Trust Fund Reform Act requires each tribe to either dispute the reconciliation report or to state that they accept the reconciliation report "as full and complete accounting as possible to the earliest possible date". It is possible that some tribes may have enough information to reach a settlement with the government in respect to their account balances; and we encourage those tribes and the government to reach settlements as quickly as possible.

However, it seems certain that many, if not most tribes, with substantial amounts in these accounts, do not have enough information to enter into account balance settlement negotiations. It is critically important that this Task Force not be mislead into thinking that a settlement is possible for these Tribes at this time.

Technical assistance funds are needed to implement the Trust Fund Reform Act provisions which offer Tribes the opportunity for self-determination in the management of their trust funds and trust assets. This could well include the management of IIM accounts. ITMA believes that it is in the best interest of the federal government to assist those tribes who desire to take over these activities and to relieve the Government of further responsibility. Technical assistance is also necessary if Tribes are going to be able to develop the information which is absent from the reconciliation reports but which must be available to reach fair settlement of Tribal account balances. Tribes cannot responsibly exercise their authority to manage these funds unless and until they have thorough and reliable information on the account balances. The BIA's reconciliation report does not provide that information for most, if not all, tribes.

As we move forward with the implementation of the Trust Fund Reform Act, we will need to find an effective way to evaluate the IIM accounts. We know that the Department lacks the funds for an actual

audit of those accounts. We also know that an audit may not be feasible for such practical reasons as the absence of essential records. However, it is vitally important that we try to agree upon a process for an evaluation of these accounts and their balances which will be accurate and provide as fair and full an accounting as possible to the account holders. We look forward to working with the Task Force toward that end.

In closing, on behalf of the members of ITMA, I want to thank the Task Force, and particularly Chairman Hayworth, for your help and assistance on this issue. With your continued interest and support, I am confident that we can arrive at a fair and reasonable resolution to the problems which have been created by the mismanagement of the trust funds.

I will be pleased to answer any questions the Task Force may have.

TESTIMONY
OF
JOHN E. ECHOHAWK, EXECUTIVE DIRECTOR
NATIVE AMERICAN RIGHTS FUND
PRESENTED TO
THE HOUSE TASK FORCE ON TRUST FUND MANAGEMENT
AT THE
OVERSIGHT HEARING ON
MANAGEMENT OF INDIAN TRUST FUNDS
JUNE 18, 1996

Mr. Chairman and Members of the House Task Force on Trust Fund Management:

I appreciate the opportunity to provide testimony on this important matter affecting the fundamental rights and interests of over 300,000 individual Indians and two hundred Indian tribes.

I. INTRODUCTION

My name is John Echohawk. I am a member of the Pawnee Tribe of Oklahoma and serve as the Executive Director of the Native American Rights Fund (NARF). NARF is a public interest, nonprofit law firm dedicated to securing justice on behalf of Native Americans and Indian tribes--something we have been doing for 26 years. Our mission is guided by five priorities. One of these priorities is holding the government accountable to Indian people and tribes. That is why I am here today.

The trust fund mismanagement crisis is a prime example of why it is so vitally important to hold the government accountable. The complete failure of the United States government to properly discharge its trust responsibility implicates what we believe is the largest and longest-lasting financial scandal ever involving the federal government. And in our view it represents yet another serious and continuing breach in a long history of dishonorable treatment of Indian tribes and individual Indians by the United States government.

What is particularly disturbing is the cavalier acknowledgment by the executive branch and Congress that the federal government has failed to account for our trust monies, yet the federal government continually refuses to take the

necessary steps to fix the system. This is precisely why the Native American Rights Fund, along with other attorneys, filed a class action lawsuit last week in federal district court here in Washington on behalf of 300,000 individual Indians. By this action, these individuals--the victims of the very government that is required by law to protect and advance their interests--hope to compel the federal government to honor its word and its legal responsibilities.

Before I discuss the substance of my testimony concerning this ongoing breach of trust affecting the 300,000 individual Indians who comprise the class of plaintiffs in this lawsuit, there are several factors which warrant the attention of the Task Force.

First, although the class action litigation is limited to the government's breach of trust affecting individual Indians, we express full support for the efforts of over two hundred Indian tribes to seek redress for the government's gross mismanagement of tribal trust funds. We are equally appalled and disturbed about this aspect of the trust fund mismanagement scandal. We therefore support the good work of the Intertribal Monitoring Association (ITMA), as well as the testimony given today by Eric Davenport, who chairs and leads the important oversight work of the ITMA relative to tribal trust funds. We look forward to working with the ITMA and the tribes to bring a just and equitable end to this conduct which continues to unlawfully deprive our people of our money every single day of every single year for over one hundred years.

Second, given the stereotypes about American Indians that seem to exist, it is important to note that the money we are talking about is our own money, both individual and tribal, as the case may be. This Indian money is derived from our own assets--it is not government money, nor did it originate from appropriated funds.

Third, I want Congress and the public to know, including Indian Country, that neither the lawyers involved in this class action litigation, nor the accounting firm we have retained, Price Waterhouse LLP, will accept contingency fees available in a case like this. Fully, 100% of the recovery in this class action lawsuit will go to the individual Indians who lost and continue to lose their money daily at the hands of the federal government. The lawyers and experts have been retained by the Individual Indian Trust Correction and Recovery Project of the Blackfeet Reservation Development Fund, and private funds are being used to

support this effort.

Fourth, I want to affirm the testimony of Elouise Cobell, who is the lead named plaintiff in the class action lawsuit: **WE BRING THIS LITIGATION AS A LAST RESORT**. As the record overwhelmingly indicates, the federal government and independent auditors have repeatedly acknowledged over time that the current trust funds management system is hopelessly broken. This includes numerous reports by the executive and legislative branches of government, including the General Accounting Office (GAO), Office of Management and Budget (OMB), and Inspector General of the Department of the Interior, as well as House and Senate hearing records and reports. Successive Administrations--both Republican and Democrat--have admitted that there are serious problems and abuses concerning what unequivocally amounts to gross mismanagement of Indian trust monies. In this sense, the responsibility is unquestionably bi-partisan in nature, and neither the executive branch nor Congress can avoid accountability. Notwithstanding, each successive Administration--including the current one--has abjectly refused to seriously address or even attempt to resolve the problem. No Administration has ever come close to asking Congress for sufficient funds to fix the system--and Congress has summarily, routinely and drastically cut back the Administration's terribly inadequate funding requests. To make a long story short, we are in court because we have been unable to persuade the executive and legislative branches of government to honor the United States' solemn trust and legal obligation to 300,000 individual Indian account holders.

I cannot overemphasize the fact that Ms. Cobell and others have attempted in good faith to work with Administration officials over the course of the past few years to reform the system. Our people have urged these federal officials to honor their trust responsibilities, to prudently manage and protect the Indian money at issue. They have repeatedly explained to the Secretary of the Interior and his staff that the money of these 300,000 Indians continues to be lost every single day and that these individuals desperately need their money. These efforts have fallen on deaf ears. Regrettably, there was no other choice but to go to court.

The defendants in the lawsuit are the Secretary of the Interior, Assistant Secretary of Interior for Indian Affairs, and the Secretary of the Treasury. It is on their watch that the problem goes unabated and continues to be swept under the rug. The suit asks the court to declare that the defendants have breached, and continue to breach, their trust obligations to the 300,000 class members. It further

asks the court to order the defendants to follow the law, fix the system, provide the account holders with an accounting, and make restitution. Finally, we seek to assure that the Special Trustee has all the tools he needs to fix the system--and to get the job done right--as Congress mandated when it enacted the Trust Fund Management Reform Act of 1994.

I will now address the federal government's trust responsibility, the nature of the individual trust accounts, and some aspects of how the government has grossly breached its trust responsibility to over 300,000 individual Indians as a result of its malfeasance, mismanagement and self-dealing of unprecedented historical magnitude.

II. ORIGIN AND NATURE OF INDIVIDUAL, TRIBAL AND OTHER TRUST FUND ACCOUNTS

For more than 100 years, the federal government by law has held in trust for the benefit of both Indian tribes and individuals, those lands, minerals, timber and other natural resources and assets that were not appropriated from us by the United States. These resources generate income. The sources of income include, but are not limited to, surface leases, timber, minerals, and settlement of land and water rights claims where the money was distributed by the tribe on a per capita basis to its members, with the money for minors and incompetents placed in trust accounts.

There are two major components to the trust funds, tribal trust funds and Individual Indian Money (IIM) accounts. There are 2,000 tribal accounts owned by some 200 tribes; each such account is managed separately. There is a total of approximately $2.3 billion in these tribal accounts.

There are more than 300,000 individual Indian accounts with a total balance of approximately $450 million. The IIM accounts are invested as a single pool. The bulk of the funds held by the United States in trust for IIM account holders is derived ultimately from income generated from individual land allotments. These allotments date from the era, lasting until 1934, when it was the policy of the United States to break up Indian tribes and tribal lands. In the implementation of this policy, the bulk of tribal land was divided into tracts normally of 80 or 160 acres (called "allotments") and the tracts were patented to individual Indians, with legal title held by the United States as trustee for the allottee. In many instances,

such tracts produce income from, e.g., the lease of tracts for grazing or farming purposes, the sale of timber from tracts, and the grant of oil, gas, or mineral mining rights. The income so derived forms the core of the IIM accounts.

To a limited extent, moneys from the following additional sources may be contained in, or have passed through, IIM accounts: (a) funds originally held in trust for a tribe which were distributed per capita to tribe members; (b) per capita distributions of funds appropriated to meet judgments of the Indian Claims Commission and courts and in settlement of claims; (c) income from investment of funds; (d) money paid from tribal funds to equalize allotments; (e) proceeds of sales of allotments: (f) compensation for rights of way; (g) rent for allotments of aged or incompetent allottees; (h) proceeds of sales of allotments of incompetent Indians; (i) money due to incompetent or orphan Indians; (j) money accruing from the Department of Veterans Affairs or other government agencies to minors or incompetent adults; (k) apportionment or allotment of pro rata shares of tribal or trust funds; and (l) per capita annual payments to members of certain specified tribes.

In addition to the $450 million held in these IIM accounts, approximately $250 million flows through them each year. The IIM account holders, most of whom are poor, need their money for basic subsistence.

In addition to tribal trust funds and IIM accounts, there are several smaller accounts. For example, the Alaska Native Escrow Account was established to escrow income from land that was to be transferred under the Alaska Native Claims Settlement Act (ANCSA) to Native corporations, but final transfer was put on hold pending the completion of surveys and other processing. While the annual amount in this fund never exceeds $30 million, at least several hundred million dollars have flowed through the trust over the years.

III. THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY IN THE MANAGEMENT OF IIM, TRIBAL AND OTHER TRUST FUNDS

The federal trust responsibility imposes traditional fiduciary standards on the conduct of executive agencies and officials. Since the trust obligations are binding on the United States, these standards of conduct govern all executive departments that deal with Indians, not just those such as the Department of the Interior or

Bureau of Indian Affairs which have specific statutory responsibilities for Indian affairs.

Federal law imposes important trust responsibilities upon executive branch agencies and officials in administering Indian assets. The Supreme Court has long held that, unless Congress has directed otherwise, the federal executive must properly discharge its fiduciary duties. In the management and administration of Indian property, executive agencies and officials are required to exercise due care, and are held to the "most exacting fiduciary standards" and "moral obligations of the highest responsibility and trust." Moreover, they are "bound by every moral and equitable consideration to discharge [the United States'] trust with good faith and fairness." Courts also require executive branch officials to adhere to the ordinary standards of a private fiduciary when managing and administering Indian assets. See generally, Felix Cohen, *Handbook on Federal Indian Law*, 1982 edition, at 225-26 (citations omitted). Indian trust funds are no exception, either tribal or individual.

With particular regard to trust fund management, as trustee of the funds in the IIM (and tribal) accounts, executive branch agencies and officials owe certain duties and responsibilities to the account holders as trust beneficiaries. These include the duty: (a) to maintain adequate books and records; (b) to maintain adequate systems and controls to guard against error and dishonesty, including an accurate accounts receivable system and separating the billing and collection functions; (c) to deposit trust asset receipts and safely and soundly invest these funds; (d) to account regularly and accurately to the beneficiaries; (e) to distribute the earned income to the proper Indian beneficiaries; and (f) to refrain from self-dealing and benefiting from the management of these trust funds.

IV. THE FEDERAL GOVERNMENT'S MISMANAGEMENT AND BREACHES OF TRUST RESPONSIBILITY REGARDING IIM ACCOUNTS

For years, Congress, the General Accounting Office (GAO), the Inspector General of the Department of the Interior, and private accounting firms have issued numerous reports confirming that the federal government has failed to carry out these fiduciary duties and has breached its trust responsibility to over 300,000 individual Indian account holders. These breaches of trust committed by the federal government, as set forth in the class action lawsuit filed last week, include

but are not limited to: (a) failure ever to reconcile or audit the accounts, so that federal officials are unable to provide accurate account balances or to determine how much money that should have been collected and credited to IIM accounts was not collected or was diverted to improper ends; (b) deliberate destruction of records from which the amounts that should have been credited to IIM accounts could be determined; (c) failure to establish an accounts receivable system, so that the federal government has no way of confirming that the income due from the trust assets, and other funds that should have been credited to IIM accounts, has in fact been collected; (d) failure to separate billing and collection functions or to install other systems necessary to guard against diversion of beneficiaries' funds; (e) failure to maintain accurate ownership records, so that federal officials have no way of determining to whom the income that has been collected belongs; (f) failure to provide regular, accurate reports to beneficiaries to tell them the correct amounts and sources of their income; (g) failure to exercise prudence and observe the requirements of law with respect to investment and deposit of IIM funds, and to maximize the return on investments within the constraints of law and prudence; and (h) engaging in self-dealing and benefiting from the management of the trust funds.

V. PARTIAL CONSEQUENCES OF MISMANAGEMENT AND BREACHES OF TRUST RESPONSIBILITY CONCERNING IIM ACCOUNTS

The consequences of these and other acts of mismanagement in breach of trust include, but are not limited to, the following: (a) as of the close of fiscal 1995, there was a total of more than 387,000 IIM accounts, among which there were at least 15,599 duplicate accounts with the same number; (b) there were many duplicate accounts with the same name; (c) twelve separate databases of accounts were maintained and there was no common database; (d) there were more than 54,000 accounts, containing over $46,000,000, for individuals with no address or no correct address; (e) out of more than 48,000 accounts containing more than $159,000,000 supposedly held in trust for minors until they reach the age of 18, over 15,000 accounts, containing more than $24,000,000, were held for persons who in fact were over 18; (f) more than $122,000,000 was held in nearly 22,000 accounts which were supposedly temporary repositories pending determination of ownership of the funds; more than 4,000 of these accounts, containing over $3,000,000, had no activity for 18 months; (g) there were more than 21,000 accounts with more than $36,000,000 for persons who had died; at

least 2400 of these were for closed estates, yet more than $600,000 due to heirs under such estates had still not been distributed; and (h) there were more than 280 overdraft accounts totaling over $325,000.

Because it does not have an adequate accounts receivable system, and because so many lease documents are missing, the federal government cannot even report to IIM account holders whether lease income has been collected from the lessees, or if it has been collected in the correct amount, or if it has been paid on time. Nor can the government determine with certainty whether payments from the IIM accounts are made to the correct individual Indian account holder. Moreover, in 1987 the Department of the Treasury destroyed all of its records pertaining to IIM accounts, and continues to destroy additional records each year. As a result of these breaches, just like the problems recently disclosed about funds collected by the IRS, the federal government **in actuality** has no idea how much IIM money it has; how much IIM money it should have; how much IIM money it has lost; or how much IIM money that could easily be and may be stolen every single day.

The government's trust fund system is in such disarray that the Arthur Andersen accounting firm would not even attempt to reconcile the IIM accounts because federal officials had either willfully destroyed, or never created, the crucial documents necessary for a reconciliation. In fact, Arthur Andersen, LLP estimated that it would take at least $108 to $281 million just to attempt to reconcile the IIM accounts, and that even then, it would likely be of no value in providing the IIM account holders with assurance about the correctness of their account balances. Indeed, at the hearing before the Senate Committee on Indian Affairs on June 11, 1996, Special Trustee Homan testified that the IIM account system was "as bad or worse" than the tribal trust accounts. Notwithstanding, the Department of the Interior has no plans or money to do any historical accounting regarding the IIM accounts, to determine how much money the IIM account holders may have lost and continue to lose each day as a result of the government's ongoing mismanagement and gross breaches of trust.

It should not escape the Task Force that the Department of the Interior was quoted in the Washington Post last week, in response to our class action lawsuit,as having fixed the trust fund management system. Nothing could be further from the truth. The fact of the matter is that Interior has done absolutely nothing to improve the system for the management of Individual Indian Money accounts, and

it should be clear by now that it does not have any plans to do so. In short, the federal government continues to turn its back on 300,000 individual Indian account holders everyday. Again, that is why we had no choice but to seek relief in court.

VI. CONCLUSION AND RECOMMENDATIONS

Over 300,000 individual Indians and 200 tribes and their members are the direct victims of this continuing scandalous government wrongdoing. The price for this government negligence and malfeasance is being paid by some of the poorest citizens of this great country. And each day that this mismanagement continues, these individuals and their families lose more and more of their money to the open, outstretched hands of the federal government--which by law is required as a fiduciary to protect their interests.

This egregious government misconduct is inexcusable and must stop once and for all. The longer it is permitted to continue, the more expensive it will be to fix the system, and the greater the government's liability will be to the 300,000 individual Indian account holders and 200 tribes and their members who are being forced daily to pay the price for the government's breach of trust. And the price goes up every day.

The resolution of this crisis is the joint responsibility of both Congress and the Administration; it is likewise the joint responsibility of both the Republican and Democratic parties. As we have indicated, one of the major problems preventing system reform is the routine lack of adequate appropriations. In short, the Special Trustee's hands are tied due to lack of funds and resources. For example, the Special Trustee indicated that it would take almost $50 million in FY 1997 just to begin to resolve this problem. However, the Administration asked for only $18 million in its appropriation request. Just recently the House Interior Appropriations Subcommittee marked this down to a paltry $1 million--about 2 percent of the amount the Special Trustee sought just to begin to reform the system, as mandated by Congress in 1994.

In fact, the $1 million in new money added by the Subcommittee is not even sufficient to complete the Strategic Plan, despite the Subcommittee's claim to the contrary. The $1 million will only pay for the user-needs survey, and will **not** cover the staff that the Special Trustee requires to actually write the plan. As a result, the plan, which Congress required to be completed no later than September

1996, will be impossible to complete by September 1997.

It will take at least an additional $22 million for FY 1997 to begin to satisfactorily reform the trust fund system as it relates to the Individual Indian Money (IIM) accounts. Without this minimal amount, the government could be paying substantially more to correct the staggering losses that are hitting these 300,000 individual Indians every single day. We respectfully urge the Task Force to do everything it can to assure that the Special Trustee receives the $22 million dollars for FY 1997 which he needs to fix the system as it pertains to the IIM accounts, so that he can do the job mandated by Congress when it enacted the Trust Fund Management Reform Act of 1994.

TESTIMONY BEFORE THE INDIAN TRUST FUND TASK FORCE
OF THE
HOUSE COMMITTEE ON RESOURCES

JUNE 18, 1996

SUBMITTED BY

ELOUISE COBELL, CHAIR
SPECIAL TRUSTEE'S ADVISORY COMMITTEE

Mr. Chairman and members of the Task Force. Thank you for the opportunity to testify before you today. I would like to say a special thank you to my Congressman, Pat Williams, who was instrumental in getting this Task Force established, and who has been a great and good friend of the Indian people on the trust fund issue and so many other issues over the years. I, the members of the Blackfeet Tribe, and Indians everywhere will miss you when you retire at the end of this year; but we want you to know how much we appreciate everything you have done for us over the past 18 years.

My name is Elouise Cobell. I am a member of the Blackfeet Tribe in Montana. I served as treasurer and comptroller of that tribe for over 15 years, during which time I received my first exposure to the horrible status of our trust funds. Since then, I have devoted a great deal of my time to trying to get that problem corrected. Presently, I serve as chair of the Special Trustee's Advisory Board, a board mandated by the 1994 Trust Fund Management Reform Act. I am also the lead plaintiff in the class action law suit filed last week against Secretary Babbitt and others on behalf of 300,000 Individual Indian account holders. I am also Project Director of the IIM Trust Funds Correction and Recovery Project, and served as chair of ITMA for the first five years of its existence. Finally, I am secretary of the board of the Blackfeet National Bank, which permits me to see the kinds of close regulation the Federal Government exercises over private financial institutions but has failed to apply to itself when it was and is managing Indian trust funds.

I appreciate the Task Force making the Indian witnesses the first panel at the hearing. I know the usual protocol is to put the federal witnesses first. However, this is appropriate for this hearing and helps me to make one of the most important points of my testimony -- what is at issue today, what is being lost by the United States Government as a result of mismanagement even as we

speak, is **our** money, not the Federal government's. It is money that is earned from land owned by tribes and individual Indians, the last remnants of the huge territories that were our before the non-Indians came to this country. On its own initiative, the United States assumed a legal trust responsibility over our lands, the assets on our lands, and the income earned from our land and made a legal commitment to properly manage the land, money and assets. So when we talk today about gross mismanagement, this is not a case of government mismanagement of its own money, which is serious enough; it is the mismanagement of the money, land and assets of someone else's money, in this case some of the poorest and least educated people in the country.

Nor is it a case of a "feel-good" commitment by the Federal government. The courts have consistently held that the United States has taken on a legal trust responsibility, with all of the fiduciary obligations and attendant liability for losses that apply to any private trustee. So what we are talking about today are violations of the law. It is unfortunate that the Secretary and his counsel have failed to address this problem as they should; as a very serious breach of trust rather than just an annoying program issue that has a much lower priority than their other program interests.

As some one who was deeply involved in the enactment of the Trust Fund Management Reform Act, and is now involved in its implementation as chair of the Special Trustee's Advisory Board, my testimony addresses what Congress and the Indian account holders hoped to achieve through the passage of the Act; how that intent has been frustrated by the Interior Department and Congress; and some recommendations for amendments needed to enable the Act to accomplish its original purposes.

A. The Purposes of the Special Trustee Title of the Reform Act

Title III of the Reform Act established the Office of the Special Trustee, directly under the Secretary. His assignment is (1) to insure the trust fund and trust asset systems are brought into compliance with basic trust standards, and (2) to assist in bringing to closure the historical reconciliation and accounting for tribal and IIM accounts. Rather than giving him direct operational authority over trust programs or having Congress dictate how the boxes should be moved around, the Act instructed him to spend his first year preparing a comprehensive strategic plan for making the necessary improvements. If, in developing that plan, he concluded that there was a need to realign functions within the Department, such as bringing all of the trust functions under a single

agency, he was to include that as a recommendation in the Plan. Upon receipt of the Plan, Congress and/or the Secretary would then be able to address the question of reorganization with a well-thought out plan in front of them,

Under the Act, his plan is due on September 30, 1996, a year from the date he was sworn in. As I will get into shortly, he will not be able to meet this date because the Secretary and the Congress have failed to give him any resources with which to develop a plan.

The purpose of the Special Trustee Title was to provide the Department with three things it had been lacking and that had contributed to the continuation of this outrageous problem for 100 years, even though it has been known to every Secretary and every Congress over that period. First, he would provide expertise in trust fund management, since historically, the high-level officials in the Department tasked with making decisions regarding trust funds had little or no experience in trust fund management. Secondly, he would provide continuity, so that efforts at trust fund reform would not be put on hold for 18-24 months every four years while a new Secretary tried to get up to speed on this complex issue. Third, he was to be the official with a single focus on, and absolute loyalty to, the account holders. This is the fiduciary responsibility of every trustee; but in the Department, trust funds are just another program whose interests have been sacrificed for the benefit of other programs.

Congress believed that it would be unwise to give him direct operational authority over any functions until he had a plan in place. Otherwise, he would be so overwhelmed by the day-to-day problems that he would be unable to focus on his plan. It was also concluded that no effort should be made to move the program out of the BIA or Interior until it had been fixed, since moving it while it was broken would simply dump the problem somewhere else.

Thought was given to placing him outside the Department, but ultimately it was concluded that the Secretary should be given an opportunity to show he would use the Special Trustee as intended, before trying to establish the Special Trustee outside the authority of the Secretary.

B. The Experience Under the Act

Today, 20 months after the Act was signed into law, and nine months after the Special Trustee was sworn in, I believe the Secretary has refused to

use the Special Trustee as intended, has severely undercut his ability to carry out his mission and has shown that, to be successful, the Special Trustee needs independent authority.

As I will detail below, I believe that the Interior Department, under Secretary Babbitt's personal direction, has been particularly insensitive to its legal obligations and has failed to provide leadership on the trust issue. One superficial indication, but a good one in Washington, is that while the Secretary has found the time to fly all over the country and to meet with hundreds of groups, he has never once in his three and a half years in office been able to find the time to meet with tribes on the trust fund issue.

However, the problem goes deeper than Secretary Babbitt. Rather, it is a well-known principle that management of a broken down company cannot be expected to reform reform itselfor the company that is mismanaged. In keeping with that principle, it appears to be institutionally impossible for a political appointee like the Secretary, with responsibility for numerous programs, to put his legal obligations as a trustee ahead of his political and programmatic preferences. In addition, Congress has failed to provide the Special Trustee with the resources he needs to do his job.

To walk you through the past year's events, the Special Trustee was sworn into office on September 21, 1995. He was and continues to be everything the account holders and Congress had hoped for when the Reform Act was being considered. He is experienced in trust funds, has a successful history of turning around troubled financial institutions, believes he has the legal obligation as trustee that the courts have placed on the United States government, and is a strong executive.

However, for the FY 96 fiscal year beginning nine days after he was sworn in, the President had requested, and the Appropriations committees had approved, only $447,000 for the Office of Special Trustee. This barely covered his salary, that of his deputy and a secretary. It left no money with which to prepare the strategic plan called for by the Act, which as I indicated, is due by September 1996. The Special Trustee asked the Secretary to find $2 million in his $12 billion FY 96 budget to enable him to prepare the plan. The Secretary said he could not find the money. Yet several months later, the Secretary could find $2 million for emergency repairs to the C&O canal. I know the canal is an important recreational spot for residents of this area, but it is not a legal obligation as is the trust responsibility.

The Special Trustee then asked Congress to provide the money through a supplemental appropriations; Congress said no, go get it from the Secretary. Since neither provided the money, we are now three months from the September 21st deadline and all that he has been able to produce is a brief outline of the plan. He will not be able to meet his statutory obligation to prepare a plan within a year of taking office.

In addition to being inconsistent with the law and a hoax on the Indian people, this refusal to spend money is foolish, since the government will incur far more than $2 million in liability during this year, as a result of the losses the account holders continue to suffer because of the Government's trust mismanagement. One of the purposes of the law suit we filed last week is to make it crystal clear to the Secretary, OMB and Congress that at some point the government will be forced to make restitution for these losses.

Last week the House Appropriations Committee marked up the FY 97 Interior Appropriations Act. While it provided the Special Trustee with $1 million to conduct a user survey, one component of the strategic plan, it failed to provide him with the $1.5 million he needs to hire the staff to actually write the plan. If this is not changed before the appropriations bill is enacted, there will not be a strategic plan by the end of FY 97, two years after the statutory deadline; and there will be two years of government liability for individual Indian trust funds that are being lost every single hour of every single day. Nor did Congress provide the $22 million he needs to begin making the reforms in the system that can be made even before the plan is finalized.

The Special Trustee's second major responsibility is to help bring to closure the reconciliation of the accounts so that there will be agreement on the account balances going forward. As Mr. Davenport addresses in his testimony, the $2.4 billion identified as unreconcilable by the Arthur Andersen report is just the tip of the iceberg.

As Mr. Echohawk addresses in his testimony, the IIM accounts are in much worse shape than are the tribal accounts, so the federal government's breach of trust to the individual Indian beneficiary is even more egregious. While Congress instructed the Department in 1987, almost ten years ago, to provide the IIM account holders with an adequate accounting, the Secretary still has absolutely no plans to do so.

In sum, the Department is in breach of its fiduciary responsibility every single day. At this point, it looks like the courts are the only branch of the government we can depend on to force the Department to honor its trust responsibilities. This is a sad commentary on the federal government when it takes a court to compel the executive branch to meet its trust obligations, obligations that the U.S. Government enforces vigorously in its supervision of regulated financial institutions.

Efforts have also been made to limit tribal involvement in the reform effort. There are two complementary organizations in this effort that work together closely to insure the Interior Department is constantly reminded that it is our money and that we must have a say in the reform effort. The Intertribal Monitoring Association on Indian Trust Funds (ITMA) is a tribal organization. It is the voice of the tribes on trust fund issues. It was instrumental to the enactment of the Reform Act and has tried to make sure the Department does not cover up the limitations of the Arthur Andersen reconciliation.

The Special Trustee's Advisory Board serves a different purpose -- that of providing advice and guidance to the Special Trustee. Its membership includes five tribal leaders -- President Ivan Makil from the Salt River Pima Maricopa Indian Community, Ed Thomas from the Tlingit and Haida Central Council, Chairman Gregg Bourland from the Cheyenne River Sioux Tribe, and President Wendell Chino from the Mescalero Apache Tribe, plus myself and four outside experts on trust fund management.

The Department has tried to cut off both of these voices of the Indian people. While the Secretary seems to have plenty of money to travel around the country making speeches, he could not find any money to enable the Special Trustee to bring his advisory board together, except for our organizational meeting last December. We have not yet met this year and it appears we will not be able to meet for the remainder of at least this fiscal year. In sum, we are a Board in name only, but are unable to do anything.

The funding for ITMA for FY 96 was cut in half, severely handicapping its ability to represent Indian country on this important issue. As a result, there has been no Indian input into the discussions now going on in Interior and we have every reason to believe the Department wants to do every thing it can to keep our organizations from raising the difficult issues it would rather keep buried during this election year, such as the Federal government's massive potential liability for its breach of trust.

C. Proposed Solutions

What can be done to stop this illegal and dishonorable behavior by the Interior Department, behavior that will end up costing the American taxpayers millions or billions of dollars in liability? The answer is simple -- the Special Trustee needs money and independent authority. The much more difficult question is how to get those to him. In regard to money, I ask the Task Force to seek to add an amendment to the Interior Appropriations bill when it comes to the floor, that requires the Secretary to find $22 million in his $12 billion FY 97 budget to enable the Special Trustee to complete the plan and make the immediate improvements in the IIM system that at least will stop the bleeding. This money must not come from Indian programs. Indians have suffered and paid enough as a result of this breach of trust. In its final report, the Task Force should recommend an approach for insuring the remaining $80 million needed to complete the reforms is available over the next three years. We are available to work with the Task Force in exploring the options.

In regard to increased authority, the Special Trustee needs to be given a five-year term, his own legal counsel (since the Interior Solicitor may have a conflict of interest) and the power to hire staff and consultants outside of the usual bureaucratic process. He also needs direct authority that is not subject to a veto by the Secretary.

Again, the Advisory Board and the IIM Corrections and Recovery project are available to work with you. I hope and pray that the end result of this Task Force's efforts is not just another report that will gather dust alongside the many reports now on the shelf. Thank you.

United States General Accounting Office

GAO

Testimony

Before the Committee on Resources
Task Force on Indian Trust Fund Management
House of Representatives

For Release on Delivery
Expected at
10 a.m.
Tuesday,
June 18, 1996

FINANCIAL MANAGEMENT

Interior's Management of the Indian Trust Funds

Statement of Linda M. Calbom
Director, Civil Audits
Accounting and Information Management Division

GAO/T-AIMD-96-111

Mr. Chairman and Members of the Task Force:

We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds. My statement

-- summarizes our assessment of the results of Interior's efforts to reconcile Indian trust fund accounts,
-- discusses the Secretary's May 31, 1996, report on trust fund reconciliation results, and
-- provides information on the status of Interior's trust fund management improvement initiatives which are needed to ensure that the trust fund accounts will be accurate in the future.

In summary, as discussed in our May 1996 report,[1] while Interior has brought its reconciliation project to a close, tribal accounts were not fully reconciled due to missing records and the lack of an audit trail in Interior's automated accounting systems. In addition, the January 1996 report package that Interior provided to each tribe on the reconciliation results did not explain or describe the numerous changes in reconciliation scope and methodologies or the procedures that had been planned but were not performed. Therefore, the limitations of the reconciliation were not evident. Also, due to cost considerations and the potential for missing records, individual Indian trust fund accounts were not included in the reconciliation project.

Tribes have expressed concerns about the scope and results of the reconciliation process. As stated in the Secretary's May 31, 1996, report to the House Committee on Resources on Indian trust fund reconciliation results, by April 30, 1996, only 2 tribes had accepted their account reconciliation results, 3 tribes[2] had disputed their results, and the remaining 275 tribes had not decided whether to accept or dispute their account balances. If Interior is unable to resolve tribes' concerns, a legislated settlement process could be used to resolve disputes about tribal account balances. Our September 1995 report[3] contained draft legislation outlining a settlement process, which we prepared in

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[1]Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (GAO/AIMD-96-63, May 3, 1996).

[2]The Secretary's report did not include in the number of tribes that disputed their account balances two tribes whose attorneys submitted letters on behalf of tribes that they represent indicating that these tribes disputed their reconciled account balances.

[3]Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).

response to a request from the House Committee on Resources and the Senate Committee on Indian Affairs to initiate discussions on options for resolving disputed balances.

While Interior has initiated several management improvement actions over the past 3 years to correct the long-standing problems that gave rise to the concerns over the accuracy of tribal trust fund accounts, the improvements will take several years to complete. Additionally, the current trust fund management and accounting systems and controls remain inadequate to ensure accurate trust fund accounting and asset management. Unless Interior corrects its long-standing trust fund management, accounting, and control weaknesses, it may be faced with additional costly reconciliations and settlements in the future.

The appointment of the Special Trustee for American Indians was an important step in establishing high-level leadership at Interior for Indian trust fund management. The Office of the Special Trustee was implemented in February 1996. The Special Trustee has recently developed a concept paper which outlines needed trust fund management improvements. This concept paper will need to be expanded to include various options and alternatives and their associated costs and benefits and ultimately developed into a comprehensive strategic plan.

Ultimately, solving Interior's trust fund management problems will require comprehensive planning, management commitment across all Indian trust program offices, and additional resources.

BACKGROUND

Several Interior agencies are responsible for carrying out the Secretary's Indian trust responsibilities. These agencies include the Bureau of Indian Affairs (BIA) and its Office of Trust Responsibilities (OTR), which is responsible for resource management and land and lease ownership information; BIA's 12 Area Offices and 85 Agency Offices; the Bureau of Land Management (BLM) and its lease inspection and enforcement functions; and the Minerals Management Service's (MMS) Royalty Management Program, which collects and accounts for oil and gas royalties on Indian leases.

In addition, an Office of the Special Trustee for American Indians was established by the American Indian Trust Fund Management Reform Act of 1994. This office, implemented by Secretarial Order in February 1996, has oversight responsibility over Indian trust fund and asset management programs in BIA, BLM, and MMS. The Order transferred BIA's Office of Trust Funds Management (OTFM) to the Office of the Special Trustee for American Indians and gave the Special Trustee responsibility for the financial trust services performed at BIA's Area and Agency Offices.

At the end of fiscal year 1995, OTFM reported that Indian trust fund accounts totaled about $2.6 billion, including approximately $2.1 billion for about 1,500 tribal accounts and about $453 million for nearly 390,000 Individual Indian Money (IIM) accounts. The balances in the trust fund accounts have accumulated primarily from payments of claims; oil, gas, and coal royalties; land use agreements; and investment income. Fiscal year 1995 reported receipts to the trust accounts from these sources totaled about $1.9 billion, and disbursements from the trust accounts to tribes and individual Indians totaled about $1.7 billion.

OTFM uses two primary systems to account for the Indian trust funds--an interim, core general ledger and investment system and BIA's Integrated Resources Management System (IRMS). OTR's realty office uses the Land Records Information System (LRIS) to record official Indian land and beneficial ownership information. BLM maintains a separate system for recording mineral lease and production information and MMS maintains separate royalty accounting and production information systems.

Our assessment of BIA's trust fund reconciliation and reporting to tribes is detailed in our May 1996 report, which covered our efforts to monitor BIA's reconciliation project over the past 5 and one-half years. As you requested, we also assessed Interior's trust fund management improvement initiatives. In order to do this, we contacted the Special Trustee for American Indians, OTFM officials, and OTR's Land Records Officer for information on the status of their management improvement plans and initiatives. We also contacted tribal representatives for their views. We focused on Interior agency actions to address recommendations in our previous reports and testimonies and obtained information on new initiatives.

TRUST FUND RECONCILIATION RESULTS

BIA recently completed its tribal trust fund reconciliation project which involved a massive effort to locate supporting documentation and reconstruct historical trust fund transactions so that account balances could be validated. BIA provided a report package[4] to each tribe on its reconciliation results in January, 1996. Interior's prototype summary reconciliation

[4]The report package presented the results of the reconciliation procedures performed by BIA's contractor for fiscal years 1973 through 1992, and BIA's reconciliations for fiscal years 1993 through 1995. It included unreconciled account statements and a schedule of proposed adjustments for each of the years covered by the reconciliation, and a transmittal letter which described the information provided and BIA's plans to meet with tribes to discuss the reconciliation results.

report to tribes shows that BIA's reconciliation contractor verified 218,531 of tribes' noninvestment receipt and disbursement transactions that were recorded in the trust fund general ledger. However, despite over 5 years of effort and about $21 million in contracting fees, due to missing records, a total of $2.4 billion for 32,901 receipt and disbursement transactions recorded in the general ledger could not be traced to supporting documentation and only 10 percent of the leases selected for reconciliation could be verified.

In addition, BIA's reconciliation report package did not disclose known limitations in the scope and methodology used for the reconciliation process. For example, BIA did not disclose or discuss the procedures included in the reconciliation contract which were not performed or could not be completed. Also, BIA did not explain substantial changes in scope or procedures contained in contract modifications and issue papers, such as accounts and time periods that were not covered and alternative source documents used. Further, BIA did not disclose that the universe of leases was unknown or the extent to which substitutions were made to the lease sample originally selected for reconciliation.

In order for the tribes to conclude on whether the reconciliation represents as full and complete an accounting as possible, it was important that BIA explain the limitations in reconciliation scope and methodology and the procedures specified under the original contract that were not performed or were not completed. At a February 1996 meeting in Albuquerque, New Mexico, where BIA and its reconciliation contractor summarized the reconciliation results, tribes raised questions about the adequacy and reliability of the reconciliation results.

SECRETARY'S REPORT ON RECONCILIATION RESULTS

The American Indian Trust Fund Management Reform Act of 1994 required that the Secretary of the Interior report to the House Committee on Resources and the Senate Committee on Indian Affairs by May 31, 1996, including a description of the methodology used in reconciling trust fund accounts and the tribes' conclusions as to whether the reconciliation represents as full and complete an accounting of their funds as possible.

During BIA's February 1996 meeting with tribes to discuss the reconciliation reports and results, several tribes stated that they would need significant time to review their reconciliation reports and the supporting documents. OTFM planned five regional

meetings[5] between March 1996 and July 1996 to serve as workshops to assist individual tribes in reviewing their reconciliation results. Because BIA has not yet held all of the scheduled meetings to discuss account holder issues and comments and many account holders have not communicated their acceptance or dispute of their reconciled account balances, the Secretary has provided an interim report on account holders' communications through April 30, 1996. The Secretary plans to submit a final report on account holder attestations of their acceptance or dispute of their reconciled account balances by November 15, 1996.

According to the Secretary's May 31, 1996, report

-- 3 tribes, including two tribes for which additional pilot reconciliation procedures were performed, have disputed their reconciled account balances,
-- 2 tribes with nominal balances have accepted their reconciled account balances, and
-- 275 tribes, including 3 tribes that had additional pilot reconciliation procedures performed, have not yet decided whether to accept or dispute their account balances.

Tribal representatives have told us that they are still reviewing their reconciliation report packages and that they have a number of questions and concerns about the results. If Interior is not able to reach agreement with tribes on the reconciliation results, a legislated settlement process would prove useful in resolving disputes about account balances. Our March 1995 testimony[6] suggested that the Congress consider establishing a legislated settlement process. Our September 1995 report provided draft settlement legislation for discussion purposes.

The draft legislation would provide for a mediation process and, if mediation does not resolve disputes, a binding arbitration process. The proposed process draws on advice provided us by the Federal Mediation and Conciliation Service and the rules of the American Arbitration Association. Both of these organizations have extensive experience in the use of third party facilitators to provide alternative dispute resolution. The proposed process offers a number of benefits, including flexibility in presentation of evidence and, because the decision of the arbitrators would be binding and could not be appealed, a final

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[5]OTFM has held three of the five planned meetings--on March 19-22 in Sacramento, California, on April 9-12 in Portland, Oregon, and on June 4-7 in Tulsa, Oklahoma. The fourth workshop is scheduled for June 18-21 in Billings, Montana.

[6]Financial Management: Indian Trust Fund Accounts Cannot Be Fully Reconciled (GAO/T-AIMD-95-94, March 8, 1995).

resolution of the dispute. In addition, arbitration has generally been found to be less costly than litigation.

TRUST FUND MANAGEMENT IMPROVEMENT INITIATIVES

BIA's reconciliation project attempted to discover any discrepancies between its accounting information and historical transactions that occurred prior to fiscal year 1993. While it is important for the Congress to consider legislating a settlement process to resolve discrepancies in account balances, unless the deficiencies in Interior's trust fund management that allowed those discrepancies to occur are corrected, such discrepancies could continue to occur, possibly leading to a need for future reconciliation and settlement efforts. Since 1991, our testimonies and reports on BIA's efforts to reconcile trust fund accounts have recommended a number of corrective actions to help ensure that trust fund accounts are accurately maintained in the future. While OTFM and OTR have undertaken a number of corrective actions, progress has been slow, results have been limited, and further actions are needed.

OTFM, Interior, and OTR have initiated several trust fund management improvements during the past 3 years. These include

-- acquiring a cadre of experienced trust fund financial management staff;
-- issuing trust fund IIM accounting procedures to BIA field offices, developing records management procedures manuals, and issuing a trust fund loss policy;
-- implementing an interim, core general ledger and investment accounting system and performing daily cash reconciliations;
-- studying IIM and subsidiary system issues;
-- reinstating annual trust fund financial statement audits; and
-- initiating improvements to the Land Records Information System.

Qualified Staff

Our 1991 testimonies[7] and June 1992 report[8] identified a lack of trained and experienced trust fund financial management staff. Previous studies and audits by Interior's Inspector General and public accounting firms also identified this problem. Our June

[7]Bureau of Indian Affairs' Efforts to Reconcile and Audit the Indian Trust Funds (GAO/T-AFMD-91-2, April 11, 1991), and Bureau of Indian Affairs' Efforts to Reconcile, Audit, and Manage the Indian Trust Funds (GAO/T-AFMD-91-6, May 20, 1991).

[8]Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

1992 report recommended that BIA prepare an organization and staffing analysis to determine appropriate roles, responsibilities, authorities, and training and supervisory needs as a basis for sound trust fund management. In response to our recommendation, in 1992, OTFM contracted for a staffing and workload analysis and developed an organization plan to address critical trust fund management functions.

The appropriations committees approved OTFM's 1994 reorganization plan. As of October 1995, OTFM had made significant progress in hiring qualified financial management and systems staff. However, during fiscal year 1996, 27 BIA personnel displaced by BIA's reduction-in-force were reassigned to OTFM. This represents about one-third of OTFM's on board staff. Some of these reassigned staff displaced OTFM staff, while others filled vacant positions that would otherwise have been filled through specialized hiring. As a result, OTFM will face the challenge of providing additional supervision and training for these reassigned staff while continuing to work with BIA's Area and Agency Office trust accountants to monitor corrective actions and plan for additional improvements.

Policies and Procedures

Our April 1991 testimony identified a lack of consistent, written policies and procedures for trust fund management. We recommended that BIA develop policies and procedures to ensure that trust fund balances remain accurate once the accounts are reconciled. Our April 1994 testimony[9] reiterated this recommendation and further recommended that BIA initiate efforts to develop complete and consistent written trust fund management policies and procedures and place a priority on their issuance. BIA has not yet developed a comprehensive set of policies and procedures for trust fund management. However, OTFM developed two volumes of trust fund IIM accounting procedures for use by BIA's Area and Agency Office trust fund accountants and provided them to BIA's Area and Agency Offices during 1995.

Also, during 1995, OTFM developed two records management manuals, which address file improvements and records disposition. Missing records were the primary reason that many trust fund accounts could not be reconciled during BIA's recent reconciliation effort. In addition, OTFM is developing a records management implementation plan, including an automated records inventory system.

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[9]Financial Management: Status of BIA's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements (GAO/T-AIMD-94-99, April 12, 1994).

In January 1992[10] and again in January 1994,[11] we reported that BIA's trust fund loss policy[12] did not address the need for systems and procedures to prevent and detect losses, nor did it instruct BIA staff on how to resolve losses if they occurred. The policy did not address what constitutes sufficient documentation to establish the existence of a loss, and its definition of loss did not include interest that was earned but not credited to the appropriate account. Our January 1994 report suggested a number of improvements, such as articulating steps to detect, prevent, and resolve losses. OTFM addressed our suggestions and issued a revised trust fund loss policy in 1995.

However, while OTFM has made progress in developing policies and procedures, OTFM officials told us that BIA's Area and Agency Office trust accountants have not consistently implemented these policies and procedures.

In addition to developing selected policies and procedures, OTFM officials told us that they began performing monthly reconciliations of the trust fund general ledger to Treasury records in fiscal year 1993 and that they work with BIA Area and Agency Offices to ensure that unreconciled amounts are properly resolved. OTFM officials also told us that they have had limited resources to monitor Agency Office reconciliation performance and assist BIA Agency Office personnel in resolving reconciliation discrepancies. While we have not reviewed this reconciliation process, it is expected that it would be reviewed in connection with recently reinstated trust fund financial statement audits.

In addition, an OTFM official told us that a lack of resources has impeded OTFM's performance of its quality assurance function, which was established to perform internal reviews to help ensure the quality of trust fund management across BIA offices. For example, according to the OTFM official, until recently, funds were not available to travel to Area and Agency Offices to determine whether the accounting desk procedures and trust fund loss policy have been properly implemented.

Interim Trust Accounting System

Our June 1992 report recommended that BIA review its current

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[10]BIA Reconciliation Monitoring (GAO/AFMD-92-36R, January 13, 1992).

[11]BIA's Trust Fund Loss Policy (GAO/AIMD-94-59R, January 14, 1994).

[12]The loss policy addresses Indian trust fund account losses that are due to BIA errors, such as mathematical errors or other losses that resulted from poor accounting practices or controls.

systems as a basis for determining whether systems modifications will most efficiently bring about needed improvements or whether alternatives should be considered, including cross-servicing arrangements, contracting for automated data processing services, or new systems design and development. In response to our recommendation, OTFM explored commercially available off-the-shelf trust accounting systems and contracted for an interim, core general ledger and investment accounting system.

OTFM made a number of other improvements related to implementing the interim, core trust accounting system. For example, OTFM

-- obtained Office of the Comptroller of the Currency assistance to develop core general ledger and investment accounting system operating procedures;
-- initiated direct deposit of collections to BIA Treasury accounts through the Automated Clearing House;
-- initiated automated payment processing, including electronic certification, to facilitate direct deposit of receipts to tribal accounts;
-- conducted a user survey and developed a systems user guide;
-- established a help desk to assist system users by providing information on the new system, including a remote communication package for tribal dial-in capability; and
-- provided system access to Area and Agency Offices and tribal personnel.

While the new system has eliminated the need for manual reconciliations between the general ledger and investment system and facilitates reporting and account statement preparation, tribes and Indian groups have told us that the new account statements do not provide sufficient detail for them to understand their account activity. For example, they said that because principal and interest are combined in the account statements, it is difficult to determine interest earnings. They told us that the account statements also lack information on investment yields, duration to maturity, and adequate benchmarking.[13] For tribes that have authority to spend interest earnings, but not principal amounts, this lack of detail presents accountability problems. Representatives of some tribes told us that they either have or plan to acquire systems to fill this information gap. OTFM is planning system enhancements to separately identify principal and interest earnings. However, additional enhancements would be needed to address investment management information needs.

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[13]OTFM provides benchmarks that are the average annual yield of all tribal trust funds rather than comparable private sector yield benchmarks.

IIM and Subsidiary Accounting System

In January 1996, the Special Trustee formed a working group consisting of tribal representatives and members of allottee associations, which represent individual Indians; BIA and Office of the Special Trustee field office staff; and OTFM staff to address IIM and subsidiary accounting issues. In addition, OTFM has scheduled four consultation meetings with tribes and individual Indians between June and August 1996 to determine how best to provide customer services to IIM account holders. These groups will also consider ways to reduce the number of small, inactive IIM accounts. According to the Special Trustee, about 225,000 IIM accounts have balances of less than $10.

Trust Fund Financial Statement Audits

In 1995, OTFM initiated a contract to resume audits of the trust fund financial statements. OTFM had not had a trust fund financial statement audit since 1990, pending completion of the trust fund account reconciliation project. The fiscal year 1995 audit is covering the trust fund Statement of Assets and Trust Fund Balances, and the fiscal year 1996 audit will cover the same statement and a Statement of Changes in Trust Fund Balances.

Land Records and Ownership System Improvements

In 1993, BIA's Office of Trust Responsibility (OTR) initiated improvements to its Land Records Information System (LRIS). These improvements were to automate the chain-of-title function and result in more timely land ownership determinations. In September 1994, we reported[14] that OTR had 2-year backlogs in ownership determinations and recordkeeping which could have a significant impact on the accuracy of trust fund accounting data. We recommended that BIA provide additional resources to reduce these backlogs, through temporary hiring or contracting, until the LRIS improvements could be completed.

However, according to OTR's Land Records Officer, the additional resources were not made available as a result of fiscal year 1995 and 1996 budget cuts. Instead, BIA eliminated 6 Land Title and Records Office positions in fiscal year 1995 and an additional 30 positions in BIA's fiscal year 1996 reduction-in-force. As a result, OTR's five Land Title and Records Offices and its four Title Service Offices now have a combined staff of 90 full-time equivalent (FTE) positions--compared with 126 staff on September 30, 1994--to work on the backlog in title ownership determinations and recordkeeping while also handling current

[14]Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

ownership determination requests. While current OTR backlogs are somewhat less than in 1994, BIA's Land Records Officer estimates that over 104 staff years of effort would be needed to eliminate the current backlog. However, because LRIS improvements are on hold, these backlogs are likely to grow.

Additional Improvements Are Needed

While BIA and OTFM have begun actions to address many of our past recommendations for management improvements, progress has been limited and additional improvements are needed to ensure that trust funds are accurately maintained in the future and the needs of the beneficiaries are well-served. For example, BIA's IRMS subsidiary and IIM system may contain unverified and potentially incorrect information on land and lease ownership that some BIA offices may be using to distribute trust fund receipts to account holders. According to a BIA official, some of BIA's Agency Office staff update IRMS ownership files based on unverified information they have developed because LRIS information is significantly out-of-date. Our September 1994 report stated that without administrative review and final determination and certification of ownerships, there is no assurance that the ownership information in BIA's accounting system is accurate. Our report also stated that eliminating redundant systems would help to ensure that only official, certified data are used to distribute trust fund revenue to account holders.

Although Interior formed a study team to develop an IIM subsidiary system plan, the team's August 1995 report did not include a detailed systems plan. Further, BIA and OTFM have not yet performed an adequate user needs assessment; explored the costs and benefits of systems options and alternatives; or developed a systems architecture as a framework for integrating trust fund accounting, land and lease ownership, and other trust fund and asset management systems.

However, even if OTR resolves its ownership determination and recordkeeping backlogs and OTFM acquires reliable IIM and subsidiary accounting systems, IIM accounting will continue to be problematic due to fractionated ownerships. Under current practices, fractionated ownerships, which result from inheritances, will continue to complicate ownership determinations, accounting, and reconciliation efforts because of the increasing number of ownership determinations and trust fund accounts that will be needed.

Our April 1994 testimony[15] stated that BIA lacked an accounts receivable system. Interior officials told us that developing an accounts receivable system would be problematic because BIA does not have a master lease file as a basis for determining its accounts receivable. As a result, BIA does not know the total number of leases that it is responsible for managing or whether it is collecting revenues from all active leases. BIA has not yet begun to plan for or develop a master lease file.

In addition, BIA and OTFM have not developed a comprehensive set of trust fund management policies and procedures. Comprehensive written policies and procedures, if consistently implemented, would help to ensure proper trust fund accounting practices. Also, to encourage consistent implementation of policies and procedures, quality assurance reviews and audits are an important tool.

In 1994, OTFM developed a plan to contract for investment custodian and advisor services. These initiatives were planned for implementation in fiscal year 1995. However, OTFM has delayed its contract solicitation for investment custodian services until the end of June 1996 and has only recently begun to develop a contract solicitation for investment advisors. OTFM officials told us that a lack of resources has caused them to delay contracting for these services.

Strategic Plan for Trust Fund Management

Since 1991, our testimonies and reports have called for Interior to develop a comprehensive strategic plan to guide trust fund management improvements across Interior agencies. We have criticized Interior's past planning efforts as piecemeal corrective action plans which fell short of identifying the departmentwide improvements needed to ensure sound trust fund management. Our June 1992 and September 1994 reports and our April 1994 testimony recommended that Interior's strategic plan address needed improvements across Interior agencies, including BIA, BLM, and MMS. We endorsed the American Indian Trust Fund Management Reform Act of 1994, which established a Special Trustee for American Indians reporting directly to the Secretary of the Interior. The act made the Special Trustee responsible for overseeing Indian trust fund management across these Interior agencies and required the Special Trustee to develop a comprehensive strategic plan for trust fund management.

The Senate confirmed the appointment of the Special Trustee for American Indians in September 1995. In February 1996, the

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[15]Financial Management: Status of BIA's Efforts to Reconcile Indian Trust Fund Accounts and Implement Management Improvements (GAO/T-AIMD-94-99, April 12, 1994).

Special Trustee reported that the $447,000 provided for his office for fiscal year 1996 is insufficient to finance the development of a comprehensive strategic plan for trust fund financial management. Despite the funding limitations, using contractor assistance, the Special Trustee has prepared an initial assessment and strategic planning concept paper. However, the concept paper focuses on one potential system solution for addressing critical OTFM and BIA financial management information requirements and does not address other alternatives. It also does not address programs across Interior agencies or all needed improvements. In addition, the concept paper does not explain the rationale for many of the assumptions that support the detail for the $147 million estimate to implement the specified improvements.

In contrast to the concept paper, a comprehensive strategic plan would reflect the requirements of the Department, BIA, BLM, MMS, OTFM, and other Interior agency Indian trust programs. It would also address the relationships of the strategic plans for each of these entities, including information resource management, policies and procedures, and automated systems.

In addition, a comprehensive strategic plan would address various trust fund related systems options and alternatives and their associated costs and benefits. For example, the concept paper proposes acquiring new trust fund general ledger and subsidiary accounting systems but, unlike a strategic plan, it does not analyze the costs, benefits, advantages, and disadvantages of enhancing OTFM's current core general ledger and investment system or contracting for services instead of acquiring new systems.

Further, since 1993, OTR has been planning for LRIS upgrades, including automated chain-of-title, which would facilitate ownership determinations and recordkeeping. Because it is planned that LRIS will provide a BIA link to Interior's core Automated Land Records Management System (ALMRS), a comprehensive strategic plan would need to consider the merits of LRIS in determining how trust ownership and accounting information needs can best be addressed. ALMRS is being developed by BLM at an estimated cost of $450 million. Because ALMRS and LRIS were costly to develop and they contain interrelated data, a comprehensive strategic plan would also need to consider the advantages and disadvantages of linking LRIS to the trust fund accounting system, as compared with acquiring a new land records and ownership system, in determining the best way to manage Indian trust funds and assets.

The Special Trustee and OTFM Director told us that they currently lack the resources to adequately plan for and acquire needed trust fund system improvements. However, without accurate, up-to-date ownership and subsidiary accounting information, trust

fund account statements will continue to be unreliable.

The Special Trustee told us that due to limited resources and the need for timely solutions, he is considering ways to use changes in policies and procedures to deal with some trust fund management problems. Many of the problems identified in his concept paper are not strictly systems problems, and they do not necessarily require systems solutions.

We agree that certain changes should be considered that would not require systems solutions. For example, centralizing management functions could help resolve the problems of inconsistent ownership determinations and inconsistent accounting practices. The centralization of some functions, such as handling trust fund collections through lock box payments to banks, could also result in management efficiencies. Similarly, ownership determination and recordkeeping backlogs might be better addressed by centralizing the five Land Title and Records Offices and using contractor assistance or temporary employees until system improvements are in place. Even with centralization of some functions, customer information and services could continue to be provided locally for customer convenience.

GAO OBSERVATIONS

Although OTFM made a massive attempt to reconcile tribal accounts, missing records and systems limitations made a full reconciliation impossible. Also, cost considerations and the potential for missing records made individual Indian account reconciliations impractical. A legislated settlement process could be used to resolve questions about tribal account balances.

Three major factors--lack of comprehensive planning, lack of management commitment across the organization, and limited resources--have impeded Interior's progress in correcting long-standing trust fund management problems. When the trust fund reconciliation project was initiated, it was envisioned that by the time it was completed, adequate organizational structures, staffing, systems, and policies and procedures would be in place to ensure that trust fund accounts were accurately maintained in the future. However, piecemeal planning and corrective actions continue, and Interior still lacks a departmentwide strategic plan to correct trust fund management problems.

In addition, while it is critical that all parts of the organization are committed to supporting and implementing trust fund management improvement initiatives, some BIA field offices are continuing to follow improper and inconsistent accounting practices. Given the continuing difficulty in managing a trust program across approximately 60 BIA offices, it is important to consider streamlining options such as centralization of

collections, accounting, and land title and recordkeeping functions.

Finally, Interior and BIA officials told us that they lack the resources to implement many needed corrective actions. However, the development of a comprehensive strategic plan that addresses interrelated functions and systems, identifies costs and benefits of options and alternatives, and establishes realistic milestones is a necessary first step. A departmentwide plan would provide the basis for management and congressional decisions on requests for resources.

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Mr. Chairman, this concludes my statement. I would be glad to answer any questions that you or the Members of the Task Force might have.

(913752)

SPECIAL TRUSTEE FOR AMERICAN INDIANS

ASSESSMENT AND STRATEGIC PLAN PRINCIPLES

PHASE I

FEBRUARY 1996

Note: The assessment, opinions and plan contained herein are a work in progress product of the Office of the Special Trustee for American Indians. The product is subject to modification and change before it becomes final and is recommended to the Secretary of the Interior, the Office of Management and Budget and the Congress.

SPECIAL TRUSTEE'S ASSESSMENT:

PRESENT POLICIES, PROCEDURES AND SYSTEMS WILL NOT ALLOW THE BUREAU OF INDIAN AFFAIRS:

1. **PROPERLY TO ACCOUNT FOR AND INVEST, AS WELL AS MAXIMIZE THE RETURN ON INVESTMENT OF ALL TRUST MONIES OF AMERICAN INDIAN INDIVIDUALS AND AMERICAN INDIAN TRIBES.**

2. **TO PREPARE ACCURATE AND TIMELY REPORTS TO ACCOUNT HOLDERS REGARDING ALL COLLECTIONS, DISBURSEMENTS, INVESTMENTS, AND RETURN ON INVESTMENTS RELATED TO THEIR ACCOUNTS.**

AFFIRMATIVE ACTION REQUIRED: PHASE I OF THE STRATEGIC PLAN

I. PHASE I OBJECTIVES AND LEGALLY REQUIRED AFFIRMATIVE ACTIONS

The principal objectives of Phase I of the Strategic Plan are the acquisition and institutionalization of systems which will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions required which will allow it to meet the objectives and legally required affirmative actions stated below:

1. The American Indian Trust Fund Management Reform Act of 1994 requires certain affirmative actions to be taken and defines, in part, certain of the Secretary's trust responsibilities to include:

1. Providing adequate systems for accounting for and reporting trust fund balances.

2. Providing adequate controls over receipts and disbursements.

3. Providing periodic, timely reconciliations to assure the accuracy of accounts.

4. Determining accurate cash balances.

5. Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

6. Establishing consistent, written policies and procedures for trust fund management and accounting.

7. Providing adequate staffing, supervision, and training for trust fund management and accounting.

8. Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

PHASE I OBJECTIVES (Continued)

2. The American Indian Trust Fund Management Reform Act of 1994 requires the Special Trustee for American Indians to ensure that the Bureau of Indian Affairs (BIA) establishes appropriate policies and procedures, and develops necessary systems, that will allow it:

1. properly to account for and invest, as well as maximize the return on the investment of all trust fund monies.

2. to prepare accurate and timely reports to account holders (and others as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their accounts.

3. to establish policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands.

3. The commercial trust standard is embodied in the following principles:

"A trustee is under a duty to the beneficiaries of the trust to keep clear and accurate accounts."

"If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor."

--A. Scott, Law of Trusts (3rd ed. 1967) Section 172

To meet these objectives and deal with the present and the future, accounting and management systems must be improved and brought up to commercial standards available in the private sector as soon as possible. Only this will permit an accurate and full accounting to American Indian beneficiaries and allow for the proper discharge of the Secretary's trust responsibilities.

II. SPECIFIC ACTIONS REQUIRED

Phase I of the Strategic Plan is designed to bring the trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management credit and operating policies, procedures and practices. System must be able to tie to and tract from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.

This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.

This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and tribes.

SPECIFIC ACTIONS REQUIRED (Continued)

4. A land records and title recordation and certification system.

This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general ledger accounting system.

This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

SPECIFIC ACTIONS REQUIRED (Continued)

8. A risk management and control system.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

III. SPECIAL TRUSTEE'S ASSESSMENT DETAILS

The basic problem is that the U. S. Government, using present systems, was, is and will continue to be unable to furnish beneficiary American Indian tribes and individual Indians with an accurate and full accounting of trust funds. The difficulty lies with the historical and current:

1. lack of an effective trust asset, leasing and resource system which can be audited to determine that trust assets are being managed prudently and consistently in the best interest of the beneficiaries.

2. lack of an accounts receivable (billing) system which precludes comparison of general ledger entries to the amounts required under the lease contracts.

3. lack of an effective IIM accounting system for collections, deposits and disbursements which leads to uncertainty over whether the right beneficiary was credited with the correct amount.

4. lack of an effective land records and ownership system which prevents timely credit of income to the appropriate individual Indian or tribal account and precludes audits to determine whether the trust assets are fully utilized and receiving the highest rate of return consistent with trust and prudential standards.

5. lack of an adequate archives and record keeping system which has resulted in a massive loss of lease and contract records and the consequent inability to do acceptable audits and reconcilements.

6. lack of an effective risk management system which prevents prudential audits, compliance reviews and quality ratings and appraisals.

7. lack of an organizational structure organized by function and dedicated exclusively to trust management.

These weaknesses have resulted in many instances in the historical and current inability to:

1. trace many of the general ledger postings of individual Indian and tribal income to the source document or lease contract such as the lease of oil and gas properties, timber, farm and ranch properties and mining properties. Consequently, the government is unable to prove the source of the money or whether the right account party received credit for the income.

2. compare the money received to the amount required by the lease or contract. In other words, the government cannot prove in many instances that the lessee paid as agreed.

3. determine whether the lease was made based on comparable market returns for the same type property. In other words, the government cannot always prove it maximized the trust income for the leased property.

4. determine whether the trust lands and minerals are leased to their full potential.

5. determine whether the trust assets and resources are being maintained, conserved and preserved.

6. determine whether the proper account party received credit for the proper amount of income derived from trust resources and funds.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

At the core of many of the accounting and reconciliation problems is the lack of source documentation to support the general ledger entries. There is not a complete way to estimate the number of missing documents, leases and contracts, but the BASIC RECONCILIATION effort disclosed the types of problems which prevent a full accounting:

1. There were 32,319 unreconciled transactions which totaled $2.4 billion and which represented cash receipts, disbursement and internal transfer transactions posted to tribal accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	$1.1 billion
Unlocated Disbursements:	$.8 billion
Unlocated Transfers:	$.5 billion
Total	$2.4 billion

2. Some offices of the Bureau of Indian Affairs have in the past sent trust and land leases and records to a federal records center where they are retained under federal records retention rules rather than under trust rules. The result was that many records were destroyed which should not have been destroyed. Some offices of the BIA followed federal retention rules for trust leases and contracts, which normally required retention of less than ten years after the leases or contracts expire. Thus, some records were destroyed which should not have been destroyed.

3. Some documents are missing for other reasons. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" part of the Reconciliation Effort was significantly curtailed because large numbers of leases and contracts could not be located.

4. There is not a complete system of redundant record keeping. Thus, no back-up exists if a record is destroyed or cannot be located for some other reason.

SPECIAL TRUSTEE'S ASSESSMENT DETAILS (Continued)

There are numerous problems and issues concerning IIM accounting which have been researched, reported on, and discussed in several internal and external reports. Some of these accounting and systems problems for the 387,631 IIM accounts with balances of approximately $450 million have resulted in the following:

1. 12 different non-integrated databases to manage. File structures are obsolete. Data records are outdated and/or inaccurate. Automated systems applications and routines are not consistent and various versions of similar applications are used.

2. 15,599 duplicate accounts. These accounts should be researched and closed under an appropriate set of policies and procedures.

3. 54,192 accounts with $42.1 million for individuals with no address or an incorrect address. The largest of these accounts contains $1,237,664. Policies and procedures must be established on the steps to follow to locate missing persons and what to do if a person cannot be located. These accounts should be researched and placed in dormant status under appropriate policies and procedures if owners cannot be located within a reasonable period of time.

4. The Office of Trust Funds Management is responsible for accounting for monies held in trust for a minor judgment recipient until he/she reaches 18. There are 48,279 such accounts with $159,633,236 in aggregate balances. But 15,912 accounts and $24,065,650 are for individuals over 18 and one of the over 18 accounts contains $422,699. These accounts should be researched and resolved under an appropriate set of policies and procedures.

5. Special Deposit Accounts aggregating $122,641,993 in 21,958 accounts are supposed to be a temporary repository for money until the ownership of the funds can be determined. Yet there are 4,412 with $3,034,692 which have had no activity in the last 18 months. These accounts should be researched and resolved as well under appropriate policies and procedures.

6. The database contains 21,002 accounts with $36,168,336 for deceased individuals. There are 2,453 of these accounts which are coded as being closed estates. However, because of the probate backlog, there are $624,083 which have not been distributed to heirs. This problem should be addressed.

BASIC PROBLEM DETAILS (Continued)

7. There are 283 accounts for individuals in the database which have overdrafts in the amount of $325,640. No overdrafts are authorized. Overdraft prohibitions should be enforced.

8. As of January 5, 1995:

A. 37% of the IIM accounts had a balance of less than $1.
B. 60% of the IIM accounts had a balance of less than $10.
C. 35,000 IIM accounts had no activity during the last eighteen months.

These accounts are expensive to administer and maintain. Policy and legal changes are required to eliminate them, escheat them or otherwise reduce them to levels that can be administered more efficiently and effectively.

9. Ownership of the land and its associated assets is critical to trust asset management and resulting trust income processes. The BIA systems and processes are currently not capable of establishing up-to-date and accurate land title records that are necessary for the lease management processes. In addition, significant backlogs in updating systems for land records revisions, additions and deletions exist. The time lags associated with probate (2-3 year average) exacerbate the problem as well. Even if the records were up-to-date, the Bureau's current Land Records Information System (LRIS) is not integrated with its Lease Management systems. Databases are separate even though they are inter-dependent and they contain redundant information. Finally, there are many instances reported that LRIS was often not available for trust asset management (e.g., leasing), due to hardware or communications problems.

10. Record retention and filing procedures at certain locations throughout the Bureau and for certain periods are not sufficient to document certain activities and account balances.

11. No accounts receivable system to assure that all income due is collected and to assess late fees and interest due. Field collections are not adequately controlled or deposited timely. Unwarranted delays exist between the receipt of money at Minerals Management Service and final distribution to the owners.

12. Poor internal controls and inconsistent policies and practices exist. The various audit reports that have been conducted on IIM related systems and activities have identified many cases of inconsistent application of policies and procedures. Inconsistency prevents the accumulation and analysis of information within the BIA, making it difficult for the BIA to provide oversight and management, make management decisions, demonstrate accountability and develop confidence and credibility in the trust asset and trust funds management processes. Poor internal controls and inconsistent practices account for over 50% of the thirty consolidated problems identified in the IIM Related System Improvement Project Report of August 1995. According to that Report, this category of problems "pervades every function reviewed". Moreover the Report notes: "The Bureau has developed procedures and policies for a number of the problems and often, guidelines are in place. However, they are either unknown to the staff performing the function, not being followed, or not comprehensive enough to provide the requisite guidance."

13. Many of the BIA's leasing and other resource management actions result in an amount due from the lessee in payment of the benefit received from the leased resource, e.g., grazing fees. Unfortunately, the BIA's systems and processes do not create or record an amount due and they do not create and account for bills or notices. Except for revenues from minerals leases, the collection and follow-up on this trust asset income rests with the individual realty staff in the field. In some cases, BIA staff have developed P. C. software to perform leasing functions and as a by product are able to issue bills for amounts due, others have manual hard copy records that prompt action, but neither of these is general practice across the Bureau. The resulting condition is that it is possible that amounts due are not established, amounts due may be uncollected, or actions against lessees that may be necessary may not be taken. Further, with little opportunity to separate duties at the agency level, adequate internal control over the entire process becomes extremely difficult and costly and is often not possible.

14. The cash account at the U. S. Treasury is not verifiable due in part to inadequate Bureau procedures and also because the U. S. Treasury is not able to provide the Bureau with accurate information regarding cumulative balances.

15. The BIA's organizational alignment causes decision-making and management for IIM and tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, who has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the tremendous number and complexity of the decisions their activities generate. That structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Further, because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices.

COST OF PHASE I OF THE STRATEGIC PLAN

(Dollars in Thousands)

	FY 1996	FY 1997	FY 1998	FY 1999	FY 1996-1999	FY 2000	FY 2001	FY 1996-2001
1. Purchase and upgrades of hardware and software for 1,236 new PC workstations and 824 existing workstations	0	7,145	1,949	2,130	11,224	2,040	2,040	15,304
2. Core systems development and related costs	0	6,665	5,078	5,079	16,822	5,117	5,117	27,056
3. End-user administration, general system support and maintenance	0	8,188	6,669	6,670	21,527	6,670	6,669	34,866
4. External professional services	0	3,560	2,060	2,060	7,680	2,060	2,060	11,800
5. Data conversion and imaging	0	5,270	200	200	5,670	200	200	6,070
6. Systems integration and implementation	0	2,500	2,500	0	5,000	0	0	5,000
7. Access by individuals and tribes	0	5,854	0	0	5,854	1,249	1,249	8,352
Sub-Total requirements for four basic trust/accounting systems (Items 1 through 7)	0	39,182	18,456	16,139	73,777	17,336	17,335	108,448

Cost Details of above are contained in a report dated December 7, 1995 by Mathis & Associates

Additional Pha. . Costs

	(Dollars in Thousands)							
	FY 1996	FY 1997	FY 1998	FY 1999	FY 1996-1999	FY 2000	FY 2001	FY 1996-2001
8. Risk Management System*	*	*	*	*	*	*	*	*
9. National Archives Center and System	0	0	11,000	1,000	12,000	1,000	1,000	14,000
10. Upgrades to the general ledger system	0	2,000	0	0	2,000	0	0	2,000
11. Contracting for:								
A. A user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, and a technical report for RFP purposes.	1,000	0	0	0	1,000	0	0	1,000
B. Rewrites of all operating and legal manuals.	0	3,500	250	250	4,000	250	250	4,500
C. A file scrub and data and document check before conversion.	0	2,000	0	0	2,000	0	0	2,000
D. An overall technical strategic plan manager to oversee above and to oversee specific action plans and budgets to implement the strategic plan.	0	1,000	1,000	1,000	3,000	0	0	3,000
12. Advisory Board Funding	400	400	400	400	1,600	400	400	2,400
13. Office of the Special Trustee (Detail previously supplied)	1,600	1,600	1,600	1,600	6,400	1,600	1,600	9,600
Sub-Total (Items 8 through 13)	3,000	10,500	14,250	4,250	32,000	3,250	3,250	38,500
GRAND TOTAL (Items 1 through 13)	3,000	49,682	32,706	20,389	105,777	20,586	20,585	146,948

*Risk Management System is estimated to cost $5 million/year beginning in second year. This, however, is not an incremental cost to present operating levels as the Risk Management System will be staffed and funded from existing resources.

Note: Costs are incremental to current running rates for trust management which will have to continue running parallel for at least two years at current operating levels before cost savings can be achieved as a result of the systems upgrades.

MATHIS
& ASSOCIATES

COPY

December 7, 1995

Mr. Paul Homan
Special Trustee
Office of Trust Fund Management
Department of Interior
Washington, D. C.

Dear Mr. Homan:

Your office recently engaged our organization for the purpose of determining approximate costs associated with the development of a comprehensive automated records system to support the information needs of the Office of Trust Fund Management.

Based on our review of documents and preliminary discussions with the OTFM staff, we understand that your basic needs include a comprehensive master trust beneficiary accounting system with master trust and custody functionality and should also include all the functions related to handling financial assets. We further understand that supplementary systems are necessary to handle real assets such as real estate, oil and gas rights, timber rights, fishing rights, etc.

In order to execute the various analyses required by the task, our own core research and consulting units here at Mathis & Associates have worked intensely over the past month to review information supplied by the OTFM staff and we have been supported in our efforts by a number of external private sector experts. We have explored insights with informed commentators (such as the GAO team that examined and commented on some of the issues raised in their report over a year ago) and we conducted a number of interviews with private sector vendors with specialized products that might be appropriate in the new environment you envision.

In the course of exploring your primary objectives, it has become clear to us that a whole new "information infrastructure" is needed throughout BIA in order to support the services you envision, specifically a "distributed, client-server" environment. This means that every member of OTFM and OTR who handles information – nearly the entire staff – will need an up-to-date PC on his/her desktop (a "client" workstation), and that PC should be able to access any database via the wide area network (WAN) and a "server" (a mini-computer that mediates data between the central source and the local work group).

The current major systems that impact your area of responsibility – LRIS, IRMS/IIM, and OmniTrust – have been aptly described by those intimately familiar with their limitations as "islands of automation with no ferry service in between." A major benefit of the future system will be to provide the necessary "ferry service" (integration) between the successor sub-systems, so that an entry in one sub-system will result in automatic and consistent update of all related sub-systems, and "next steps" will be taken insofar as possible without human intervention.

But the "client-server" environment you envision will also provide ferry service (connectivity) to and from virtually every desktop at OTFM. In this way, data and functionality are passed to the lowest possible level, so that end users and clients can selectively access and update the data they need on a daily basis. Thus, a secondary benefit of the immediate project will be to provide the long-delayed modernization necessary to attain true "office automation."

We cannot emphasize enough that this shift to client-server environment will be costly in itself; it will change the way work can and should be done in this new environment; and it will challenge individuals' and organizations' ability to adapt. Nevertheless – with appropriate management skill and sensitivity to end-user needs (both "internal" bureau personnel and "external" Indian clients) – we are confident that the client-server environment will address deficiencies of the current system, while making possible the improved services and capabilities that you envision.

We have also identified and reviewed industry-embraced forecast models for a client-sever environment and associated land management and trust systems similar to those proposed. In creating the model we developed for your purposes, we have relied heavily on the work of a Stamford, Connecticut-based consulting organization, The Gartner Group, which is well-established in its reputation and service to the electronic industries. Based on their on-going research and the cooperation of over three dozen major American corporations–Compaq Computer, IBM, Hewlett-Packard and Microsoft among them–their research assisted us greatly in creating some of the assumptions upon which our current model has been developed.

Because of the complexity and uniqueness of some aspects of your requirements–most notably the data conversion and systems integration issues–not all private sector modeling elements were appropriate. We have also relied significantly on information provided us by OTFM in instances where private sector norms were not appropriate. And, we have also relied on our own experience to make modifications wherever we believed them to be necessary.

In creating this model, we were necessarily limited by the amount of information currently available to us. In many instances, the data in hand is far from complete and we were, therefore, left to our own devices to suggest what we believe to be reasonable assumptions. For instance, we were unable to get an exact number of external users--either individuals or tribes--who would require access to the system. We have assumed your policy will dictate universal access for approximately 300 tribes and the financial impact of that assumption is reflected in the last item on the spread sheet.

In the weeks ahead, you and your staff will want to thoughtfully consider some of these basic assumptions--such as the number of ultimate end-users who will access the envisioned system and the number of existing work stations that can be modified to meet new requirements--as these statistics form the bedrock of our model. This work should be part of a comprehensive inventory and user needs and requirements study.

Most trust systems generally have an accounts payable and receivable system with full tax accounting at the state and federal level. Thus, the visionary objectives of the Special Trustee--as we understand them--are accommodated today in most master trust systems. For the sake of this model, we have estimated that a comprehensive suite of systems with the master trust and global custody system at its core will cost in the range of $5 million, with all installation and systems integration costs incurred as additional expenses. (This represents, of course, only a small fraction of the overall cost.)

We have also taken note of the fact that as of January 5, 1995, 37% of the IIM accounts had a balance of less than $1.00, while over 60% of the accounts had less than $10. These accounts should be escheated or some way must be found to get them outside the trust account processing cycle. A trust account costs between $40 and $60 to process each month--at a minimum--and the low balances do not justify this. This is also true of the over 60% of accounts with less than $10 in balances. We are aware that some trust departments within banks do not accept balances of less than $100,000. An option may be to move them to a standard deposit account (held in trust.)

We also note that 35,000 accounts had no activity during the last eighteen months and over 51,000 accounts have no instructions or lack a valid address. This points to a significant file maintenance problem and the data needs to be scrubbed before conversation. The cost of doing this activity is substantial and should not be under estimated. Other findings point to a file/data integrity problem that needs to be addressed before the implementation of a new system.

We understand that at the present time, there are over 377,000 accounts in total -- the vast majority of these individual Indian accounts, less than 2,000 tribal accounts -- with more than $2.1 Billion in assets. While the number of accounts are high, the asset size is low (overall and per account.) This makes it important to clean up the operations, processes and data. The cost of processing trust accounts in a service bureau may be preferable after the clean-up is completed. But finding such a vendor to do this may not be easy, as many such businesses are reluctant to engage in business with government agencies as they have better opportunities in the private sector. This must be kept in mind as the project progresses.

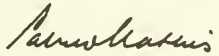
Creating a cost model for LRIS--OTR's land records and ownership system--has been a particular challenge, given the limited of specialized vendors who build and support such applications. But our research has produced enough information for us to offer some ballpark estimates of the likely costs of implementing a fully-integrated successor system--with state-of-the-art mapping capability--that can be hooked into the client-server environment mentioned previously and deployed down to the agency office level. For purposes of the present cost estimation, we have assumed: (1) an average of four users who will access the new system within each of the 87 agency offices or 348 users; (2) an average of five users within each of the 12 area offices or 60 users; (3) and an additional 11 users at various headquarters locations--for a total of 419 users nationwide.

Our estimates for all costs likely to be incurred during both 3-year and 5-year epochs are detailed on the attached spread sheets. Our explanation for our calculations are reported in an attachment entitled "Legend for Interpreting Office of Trust Fund Management Spreadsheet Detailing Systems Development/Operations Costs." In sum, our estimates for the 3-year epoch is $73,777,292 and our estimate for the 5-year epoch is $108,447,853.

Finally, we emphasize that these estimates do not take into account the various tasks associated with consolidation of all the records currently maintained by the area offices, the agency offices and the federal records system. The Federal Records Archives maintain 18 sites alone--which are different from the BIA locations. To create a cost model for the physical consolidation--as well as the electronic imaging and storage--where physical consolidation is undoubtedly the antecedent work--will require additional investigation and probably should be part of the longer-term strategic planning effort. This project should be tied to specific strategies and practices associated with overall document management--including, but not limited to all imaging activities.

We appreciate the opportunity to support this important work of the Office of Trust Fund Management and will be happy to meet with you and your staff to review our findings.

Sincerely,



Patricia Mathis

MATHIS
& ASSOCIATES

OVERVIEW OF COST

	3-Year	5-Year
1. Purchase and upgrades of hardware and software for 1,236 new PC workstations and 824 existing workstations.	$ 11,223,610	$ 15,303,940
2. Core systems development and related costs.	$ 16,822,054	$ 27,056,192
3. End-user administration, general system support and maintenance.	$ 21,527,188	$ 34,865,441
4. External professional services.	$ 7,680,000	$ 11,800,000
5. Data conversion and imaging.	$ 5,670,000	$ 6,070,000
6. Systems integration and implementation.	$ 5,000,000	$ 5,000,000
7. Access by individuals and tribes.	$ 5,854,440	$ 8,352,280
GRAND TOTAL	$ 73,777,292	$ 108,447,853

LEGEND FOR INTERPRETING OFFICE OF TRUST FUND MANAGEMENT SPREAD SHEET DETAILING SYSTEMS DEVELOPMENT/OPERATION COSTS

A. Existing PC work station hardware: In order to provide universal access, each end-user will need a PC or individual work station at their desk. Absent a recent and reliable inventory of existing hardware that is suitable for this automation project, we can only make generalized assumptions about the quality and usefulness of existing equipment. Our model presumes that approximately 40% of existing hardware can be salvaged or upgraded to meet modern standards. Therefore, 40% of estimated users (2,060) means that there will be 824 surviving work stations.

B. Upgrade. Because of the aging of much this surviving equipment, upgrades will be necessary to provide adequate processing power to support modern applications. Our operative assumption is that approximately $100 will be required each year for each work station. Minimum upgrades will require 100 MHz Pentium capability to support the emerging environment. But anticipated upgrades will routinely involve memory and DASD and may also require network interface cards and, in some instances, processors. Therefore, the cost is 824 X $100 = $82,400.

C. Maintenance. These costs are presumed to be 6% of the total value cost of the work stations. OTFM staff estimate the cost-per-work station to be $2,500 --a reasonable prediction based on current marketplace prices. If 824 surviving work stations are to be maintained, then their total value is estimated to be $2,060,000. (824 work stations x $2,500 each = $2,060,000). Therefore, 6% of $2,060,000 is $123,600.

D. New PC work station hardware. For each end-user whose current hardware is not suitable, new desktop hardware must be acquired. The model presumes that approximately 60% of all internal end-users will require new work station hardware--with an estimated need for 1,236 new stations.

E. New PC work stations. If the cost of each new work station is $2,500, then the cost for a total of 1,236 acquisitions will be $3,090,000 for Year 1.

F. Upgrade. See "B" above for explanation of $100 per work station. Upgrades during Year 1 are routinely offered as suites or warranties. Upgrades at $100 per work station will be required in all years after Year 1.

G. Maintenance. The model presumes 6% of the original purchase price of the PC work station. For newly purchased machines, maintenance is usually not a cost factor for Year 1, since virtually all maintenance is included as warranty during the first year. (There is also a trend among some manufacturers to move to three-year warranties, but this cannot be taken as a given. In any case, extended warranties often result in higher front-end cost.) Therefore, if 1,236 machines require annual maintenance at a cost of 6% of total cost, then annual maintenance will be 6% of 3,090,000 or $185,400.

H. New client PC software. OTFM staff specified Windows for Workgroups software at a unit cost of $35. However, we concur with other experts that while the operating system software is included in the original purchase price, new releases of operating software are common and, at some point, incremental charges will be involved. We believe a more realistic cost estimate should include a $150 upgrade fee by Year 3. Therefore, the cost is estimated to be $43,260 in Years 1 and 2 (based on OTFM's $35 assumption) and $185,400 in Year 3 (based on our $150 upgrade assumption).

I. Work station software upgrade. See comments under "H" above for details regarding assumptions.

J. Office Suite software. Suite software is the standard set of productivity tools--such as word processing, spread sheets and presentation tools. Bundled together, they provide all the basic administrative tools appropriate for most office actions. Sometimes they are offered as part of the hardware acquisition (although incorporated into the purchase price.) Sometimes these "suites" are purchased as a combined software offering and must be loaded into each PC on an individual basis. Present cost for these tools was estimated at $300 per PC work station, which could include deep volume and government discounts. The 1,236 new client PCs will each require a suite at $300 each; therefore 1,236 x $300 = $370,800.

K. Office suite software maintenance and upgrades. We are assuming an upgrade and maintenance cost of 15% of the total cost of the suite software ($370,800). This is equal to $55,620 for each out year.

L. Documentation/Distribution. Each end user needs access to documentation regarding the software available at their work station. Given the size and scope of this network environment, we believe that a full set of shrink-wrapped documentation for each desktop would be cost-prohibitive. Therefore, we assume one full shrink-wrapped set of documentation per site. Costs are estimated to be $300 per agency office site. This is a one-time cost. The number of sites is estimated to be 110. Therefore, 1104 x $300 = $33,000.

M. Host access software. End-users will need to access legacy systems and mainframe platforms--e.g. LRIS and IRMS--during the transitional years. Software costs required to emulate mainframe applications on PC work stations are estimated to be $100 per work station per year. If the total number of end-users is 2,060 at $100 each, then the cost will be $206,000.

N. LAN wiring. Although existing LAN configurations currently support existing PCs, it is reasonable to predict that any new system will require a comprehensive new LAN design. Costs for implementing this design are estimated to be $250 for each work station. More than one wire is usually installed to provide both voice and data transmission to the desktop. A modest installetion requiring only Level 5 unshielded twisted-pair cable, or UTP wire, the cost of the wire, wall jack, terminator and labor can range from $100 to $150 per station. This estimation assumes the installer has easy access to all office and cable ducts. Given the remote distribution of BIA facilities and varying age of office facilities, these costs are predicted to more likely range between $250-$300. For the purpose of this exercise, we assumed a cost of $250. Therefore, for 2,060 work stations, the cost is estimated to be $515,000.

O. Hubs/routers. Hubs are required to connect the work station to the server. Routers interconnect servers at the local work group level (local facility or branch) and central location (headquarters). Our assumptions here are based on statistics provided by OTFM: $3,000 for each hub and $2,500 for each router for a total cost of $5,500 for each agency office. If the cost per agency office is $5,500, then the cost for 87 agency offices is $478,500. In order to provide global Office of Trust Management communication, a 64-line two-way Chatterbox (allowing multiple conversations) will be required at $31,000 per unit; and two Cisco 7000 Routers for a total cost of $44,000 ($22,000 each). Thus, the total estimated cost for this element is $478,500 + $31,000 + $44,000=$553,500.

P. Communications. The remote server locations and the central sites must be provided telecommunications links. The most efficient technology is either frame relay or cell relay--both of which require 56-Kbit transmission service. The cost for a single 56-Kbit line is currently commercially priced at different levels by major carriers. Our model presumes $5,000 per year. (We have not factored into this equation whether or not government discounts--such as those possible under post-FTS2000 awards--will be applicable in this environment.) Therefore, if we presume 99 remote sites at a cost of $5,000 each office, the annual cost will be $550,000.

In addition, each agency office will require two voice lines (for outside user inquiries) and one fax line at an estimated cost of $1,500 per line per year. Thus, three telephone lines at $1,500 is $4,500 per year per site. For 87 sites, the total cost of telephone lines is $391,500. The area, regional and headquarters locations are assumed to be equipped with adequate voice and fax capabilities.

The telecommunications traffic at the primary location server sites is substantially higher because these central locations must communicate with a broader audience. Therefore, these sites require a larger bandwidth capacity and share a larger financial burden than the remote sites. Presuming six primary location servers at a cost of $47,000 per year per server for two 1.5 Mbit frame relay lines, then 6 x $47,000 = $282,000.

The combined total for these estimated communications' costs is, therefore: $550,000 + $391,500 + $282,000 = $1,223,500 each year.

Q. Laser printers. Although often overlooked in creating budgets, experts point out that printer costs usually represent approximately 1% of total cost of ownership and can, in fact, exceed the costs of the servers to which they are attached. A useful model presumes that an average of one 8-pages-per-minute laser printer is needed for every eight end-users. Given 2,060 end-users, there will be a companion need for a minimum of 258 laser printers. At an estimated cost of $1,200 for a medium speed printer, 258 printers will cost $309,600.

R. Upgrade/replacement. It is important to remember that printers have to be replaced on a regular basis. If the total cost of the laser printers is $309,600 (see reference "Q" above), and the estimated annual cost to upgrade and replace is presumed to be 10% of the total original purchase price, then the annual cost beginning in Year 2 will be $30,960.

S. Maintenance. Because even new mechanical devices break down and are subject to end-user abuse, printer maintenance is known to be relatively expensive starting in Year 1 and estimated to be 20% of the original purchase price. Therefore, if the total purchase price is $309,600 (see item Q above), then the annual cost beginning in Year 1 is $61,920.

T. Work group server hardware. We anticipate that these servers will be required to provide local data and resource sharing for an entire agency office work group. In addition to laser printers, resources include plotters, DASD (expanded hard-disk storage capacity), and back-up hardware and software. A state-of-the-art local work group server--including the back-up hardware and software--is estimated to cost approximately $5,500. If each agency office were to receive such equipment, then 87 agency offices at $5,500 each would result in a cost of $478,500.

U. Upgrade. Servers will need to be updated over time. These upgrades will require DASD (hard disk capacity) and expanded memory. Our model presumes that 5% of the original purchase price will be required for upgrades in Years 2 and 3. If the total purchase price is $478,500, then upgrades will cost $23,925 in each of Years 2 and 3.

V. Maintenance. Maintenance on servers follows the same paradigms as those assumed for typical PC maintenance--which is 6% for all years beyond Year 1, which is covered under warranty provisions. Therefore, 6% of $478,500 is $28,710 each Years 2 and 3.

W. Work group server software. We presume the operating software will be either Novell or Windows NT, given the fact that these operating systems are now the common standard. Current 1995 costs are in the $600 per server range. If we presume $1,000 per server and 87 agency sites, then the cost will be $52,200.

X. Upgrade/maintenance. Standard presumptions are that annual upgrade and maintenance costs related to the work group server software will be 15% of the original purchase price. Therefore, if the total cost is $52,200, then 15% will result in an annual cost of $7,830.

Y. Primary location server hardware. Because they must support a larger number of users primary servers are both larger and more expensive. OTFM staff estimate eight servers at a cost of $49,000 each. Therefore, the total cost if $392,000. This allows for some back-up controllers.

Z. Upgrades. Our model presumes a cost of 5% per year for hardware upgrades, primarily for memory and DASD to account for the growth of end-user files and data. Therefore, if the acquisition cost is $392,0000, then 5% is $19,600 each year.

AA. Maintenance. Maintenance costs are calculated to be approximately 6% of the purchase price of $392,000. Therefore, 6% of the purchase price is $23, 520.

BB. Environmental requirements. In order to maintain vital environmental control, certain adaptations must be made to the facility to sustain constant climate conditions. Additional charges are associated with power, chilled water and other cooling and heating elements. While we cannot know exactly what environmental adaptations will be necessary--and conceivably the magnitude could be quite small if existing facilities are already available and adequate. We have nonetheless included this element given the possibility that some structural changes may be necessary to support either new configurations or parallel operations during the transitional phase. Our model assumes the need for only one mainframe at a single location. Based on our limited information, we are assuming $15,000 per year.

CC. Primary server software. Estimates are for fully configured software, not only base operating systems. They include relational database management systems, PC interconnect software, monitors, development tools and wide-area network support. We assume 12% of total hardware costs of $392,000, which is $47,040 per year.

DD. Upgrade. As with all software, this will need to be periodically upgraded. Our estimated costs are based on the standard assumption of 5% of purchase price for Years 2 and 3. Therefore, 5% of $47,040 is $2,352.

EE. Maintenance. Maintenance consists of the service needed to diagnose and fix problems with the primary server software. This can range from telephone support to on-site assistance. This is estimated to be 17% of purchase price ($47,040) for Years 1, 2 and 3. Therefore, the cost is estimated to be $7,997. each year.

FF. Trust Management/Individual Account System. This item encompasses a master trust and beneficiary accounting system. We assume that OTFM's goal is to realize a mutual fund type of system that minimizes transactions and disbursements, so that individual check disbursements would occur only on demand, rather than automatically. Informed banking and trust management experts tell us that since the cost of cutting a check runs around $1.50, it is obviously impractical to disburse checks for ten cents. Automatic monthly check disbursement means that the cost of each account runs closer to $5 per month, as opposed to $2.00 in a transaction-to-demand system. For the purpose of this model, we assume 200,000 individual Indian accounts would ultimately survive after data clean-up at a monthly cost of $2.00 per account. Thus, our formula was derived as: 200,000 (accounts) X $2 per month per account for a total of $4.8 million per year. Customization and training associated with implementing this system is accounted for in line item EEE.

GG. Lease Management System. The functionality encompasses in this item is the management of royalties received from leases on Indian lands. The combination of systems required to handle this task would address surface and subsurface leases, ownership and chain-of-ownership needs. The costs listed here are derived from conversations with several private sector vendors who specialize in this type of application.

GG.1 Maintenance and Support. This estimate has been derived from interviews we conducted with vendors who provide this service.

HH. Land Management System. The land records and ownership data processing system must process and validate ownership and encumbrance data at the time of data entry. The land records and ownership data processing system must store all processed data as part of the database for direct, on-line access by program users, clients and client data systems. As well, this system must maintain data and data accessibility at the local Land titles and Records Office level. This data, likewise, must be accessible from a central storage facility for backup.

To the greatest degree possible, the land records and the ownership data processing system must not be computer hardware or operating system dependent. The land records and ownership data processing system must also operate in more than one data processing environment. Additionally, the system must provide a standard land title and records application and user interface. And finally, the land records and ownership data processing system must follow all federal open systems and inter-operability requirements.

One leading vendor we interviewed had a land records ownership and mapping software system which would appear to be ideally suited to this environment and, for that reason, we were inclined to accept the basic cost model described by that company. Assuming 4 client work stations at each of 87 agency offices, the project will require software for 348 work stations at a cost of $1,000--resulting in an annual software cost of $348,000. We then assumed 5 clients in each of the area offices (12 X 5 = $60,000) and one client in the 11 remaining sites (11 X$1,000) to reach a total cost of $419,000 for client-related software. The software at the server level is calculated as $10,500 per server. Assuming 8 primary servers--each loaded with this software--we came up with a cost of $84,000 for server-related software. The total application cost is, therefore, $503,000 ($419,000 + $84,000).

HH.1 Maintenance Support and Upgrade. These costs were dervied directly from vendor quotations.

II. Primary server relational databases. Many traditional hardware providers also offer associated software which allows users to link certain information to other data in such a way as to observe the consequences of one change on other possible outcomes. Most likely, it will be necessary to buy at least one relational database management software package for the client/server environment. Research indicates the vendor-derived estimates are around $85,000 for Year 1 only.

JJ. Upgrade/Maintenance. These costs are estimated to be 20% of the total primary location relational database cost ($85,000). Therefore, 20% will result in a cost of $17,000 beyond Year 1. .

KK. Systems management and application development software. Although many vendors provide "suites" of systems management software, no single vendor can currently offer an all-inclusive suite of products to address every requirement envisioned by the OTFM. This means that, at least in the near term, OTFM will need to deal with several vendors and either accept the role of systems integrator or outsource this function entirely. Informed industry commentators point to major marketplace shifts underway in this arena. They caution that cost projections should not be construed as an implication that the technology is available to run on specific platforms, or that it is available to support all key downstream platforms--such as work-group servers and clients. In any case, these conditions forecast dependence on multiple vendors unless the activity is outsourced.

LL. Upgrade/Maintenance. Because current conditions require dependence on multiple vendors, users will likely be forced to replace software as vendors mature and the market becomes redefined. This will likely result in higher costs for software maintenance and upgrades. Thus, we have presumed a 25% increase for maintenance and upgrades of systems and management software, rather than the standard 15% due to the likely need for technology replacement. (The formula is, then: 25% of 352,350 = $88,088).

MM. End-user support labor. These costs vary widely and are difficult to predict, especially given the fact that no comprehensive study of end-user requirements, skills or training assessment has yet been made. For purposes of this model, labor costs include all those individuals throughout the organization who are required to support the end-users as they both adapt to the new technology and employ it on an on-going basis--including those staff necessary to provide "Help Desk" support, emergency maintenance, etc. We have applied the ratio of 1 support staff to every 50 end-users--resulting in a requirement for 41 staff. Thus, if the total number of end-users is 2,060, and the cost for 1 staff year is $70,000 (burdened labor rate), then the annual cost for this support is $2,870,000. (Approximately 41 staff, each of whom will cost $70,000 each year).

NN. Application development labor. This cost component encompasses the time spent by dedicated MIS professionals managing, developing, maintaining and enhancing client/server applications for the affected operations. Although programming costs are installation-dependent and influenced by many factors, various rules-of-thumb are common--based on ratios of number of application developers to number of end users. In private sector studies, these ratios varied between a low of 25-to-1 to more than 2,000-to-1, depending on a range of factors. Available research indicates that the median ratio was about 250-to-1. Because of the complex nature of the OTFM's and OTR's requirements--especially the land-based aspect--we have used a 200-to-1 ratio. Thus, if 2,060 end-users is the assumption, then 2,060 - 200 = 10 dedicated application developers will be needed. Therefore, 10 dedicated application developers at an annual cost of $90,000 each (burdened labor rate), will result in a cost of $900,000.

OO. Primary server site operation labor. Operations labor is the MIS labor necessary to operate and manage these primary server(s). Model costs are presumed to be 1/3 of the total costs of hardware and software associated with the primary servers. Therefore, if the total cost of the primary server site hardware and software is $439,000, then 1/3 of this is $144,883.

PP. Workgroup server operation labor. These costs reflect MIS labor needed to support the workgroup level servers. Using the same formula, if the total cost for the workgroup hardware and software is $530,700, then the workgroup operation labor cost is calculated to be $175,131.

QQ. Administrative support labor. These costs are activities related to acquiring and administering the client/server system. These are the real, but hidden, costs of acquisition and administration associated with individuals outside the mainstream MIS organization. These include costs of purchasing, accounting and the IT organization itself. It also includes the study and acquisition of the hardware, software and external services for the client/server network. It must also include a component for legal support, either as an internal legal department or outside legal counsel that writes, reviews and negotiates contracts for hardware, software and related services. Budgets must also recognize costs for audits and for evaluations of customer satisfaction. We have assumed at least one audit per site during the 3-year period. And finally, new policies and practices must be defined and management and staff time are necessary to create, document and enforce IS policies and practices for the client/server system.

According to private sector surveys, a typical annual labor cost component is about $500 to $700 per work station per year. Thus, if we assume 2,060 work stations and assume a mid-range cost of $600 per station, then the total cost will be $1,236,000 per year.

RR. End-user training. In our experience, this important factor is often minimized or ignored altogether with devastating effects on the ultimate success of any automation program. To hope that any automation will be successful is to plan carefully for a comprehensive education and training program so that everyone who uses this technology will have the skills, knowledge and training necessary to benefit completely from all its functionality. Three components make up end-user education: (1) the cost per student day of educating the end user; (2) the cost per student day of educating the dedicated, professional , end-user support staff; and (3) the cost of educating the application development staff. In this model, we are assuming that the cost per student day for the end-user is $150. Therefore, the cost to train all users for one days is 309,000 and the cost to train all users for 5 days (the minimum level) equals $1,545,000 for Year 1.

For Year 2 and all subsequent out years, we are presuming a need for at least two student days for each end-user. Thus, the annual cost in Years 2 and beyond will be $618,000.

SS. End-user support training. The model presumes there will be 41 staff members required to provide support training. Each member will require specialized training both in Year 1 and in subsequent years in order to deliver support to end-users. Most private sector models assume 18 days of training for each member at a rate of $365 per day. Thus, if 41 staff members cost $365 a day, then the cost for all members per day is $14,965. For 18 days, the total cost is $269,370.

TT. Application development support training. All of the professionals who develop this software must be trained and re-trained on a regular basis. Our model assumes 10 application developers and the cost to train each of them for one day is estimated to be $320. Thirty (30) days of training must be allocated for each developer. Therefore, the cost to train 10 developers for 30 days is $96,000.

UU. External professional services. External professional services from industry consulting groups will be required to provide expertise in particular client/server areas. OTFM must first plan for expertise to support necessary business process re-engineering efforts, so that the critical work of re-defining how business will be conducted is fully integrated into the planning and design of the new automated systems.

Because client/server environments are just now emerging, many organizations do not have all the requisite skills to implement such projects and professional services will be required to augment in-house skills, especially in the early years. The amount of professional services required can vary dramatically, depending on the environment, but a private sector rule-of-thumb assumes costs to be $1,000 per work station or $2,060,000 per year (2,060 users x $1,000). Our initial discussions with industry experts predict that introductory training costs alone in this environment could be enormous. As OTFM moves toward greater self-reliance, this cost can be expected to be reduced in the out years.

It is also important to note that no comprehensive review of end-user requirements has ever been conducted. Before system needs can be translated into actual requirements, a complete review of the needs of both internal and external users must be conducted. This will require site visits to most of the major agency offices and a substantial sampling of external users to ensure that the feature functionality of the envisioned systems will respond to the business needs of both the internal and external users. Such reviews are routinely and most appropriately conducted by unbiased third parties who can bring a fresh look to the situation and who have no particular allegiance to any one solution or to any existing organization. Such an engagement usually requires the services of a team of highly-trained, professional technology analysts working intensely for a period of nine-to-twelve months and costs routinely range from $1,000,000 to $3,000,000 for such an engagement. Despite the cost, this is an absolutely essential component, for without it, the project will be developed without having really understood and documented the actual needs of the users. For this model, we have assumed a mid-range cost of $1,500,000 for Year 1.

Thus, for Year 1 professional costs should be expected to reach $3,560,000 ($1,500,000 + $2,060,000) for Year 1 and $2,060,000 each year thereafter.

VV. End-user supplies and facilities. Other expenses must be incurred in this category. They include such items as paper and toner for printers, media, diskettes, special equipment, mousepads, small files boxes for floppy disks, special furniture, fixtures, stands for paper, heat, light, air conditioning and power necessary to drive the desktop. Professional surveys indicate that the amounts spent for facilities average $150 per work station per year. Thus, for 2,060 users, the annual cost will be $309,000.

WW. Transportation. Costs must be incurred to ship and move PCs and related equipment. Although the initial shipping of new equipment will be considerable during Year 1, equipment will need to be replaced and related supplies will continue to be transported to end-users throughout the cycle of the automation program. Thus, this model assumes a cost of $20 per work station for each year, or $41,200 each year.

XX. Travel. While this is a highly variable cost, it is important to keep in mind that OTFM sites are highly dispersed and the unique requirements of the external user community will almost surely require substantial travel during the initial development period. If each were visited a minimum of 5 days during the first year, then a total of 520 travel days would be required. At an estimated cost of $300 per travel then, then the annual cost would be $156,000. (This estimate is conservative and presumes that both originating and terminating cities for travel would be within the same geographical region. It would be virtually impossible, for instance, to make a three-day round-trip from Washington, D. C. to Billings, Montana for $900!)

DATA CONVERSION ACTIVITIES:

YY. IIM Data conversion. Although OTFM staff estimate this first year cost to be $250,000, based on their formula that presumes 10 people would work 500 hours at a cost of $50 per hour, this estimate presumes that this awesome task could be completed in twelve and a half weeks--a goal we believe to be extraordinarily optimistic. Private sector experts always warn that data conversion costs are routinely under-estimated and always result in shocking over-runs. Given the well-known problems with the current data, we recommend a formula that assumes the task will require closer to 1,000 hours or 25 work weeks. Thus, we estimate this cost to be $500,000 (10 x $50 x 1,000 hours).

ZZ. Lease-related data conversion. Data here consists primarily of the terms of a lease, the land involved and the lessees. It can also include appraisal information, bond and compliance data, modification data, payment information, and remarks. · Land descriptions represent the land being leased and relate directly to the ownership file. The IIM special deposit account number, into which collections are made, can be included in this file. The payment data can be maintained by the user, but is not automatically updated by the billing or collection processes. These accounts are not near so troublesome as the IIM files--with problems such as wrong addresses, missing data elements, etc.--therefore we believe that OTFM's estimate of 10 people for 500 hours for a period of $50 per hour is supportable. Therefore, the cost is estimated to be $250,000.

AAA. Ownership data conversion. These data contain land descriptions and the current owners of the land. Ownership is represented by fractional interest in a per tract basis. The owner ID number in this file does not always match the ID number in the people file, or the account number in the IIM file. OTFM staff estimate that the task of reconciling and correcting these inconsistencies will require 20 people working for 680 hours at a cost of $50 per hour. Absent no reason to doubt this, we have incorporated this assumption into the model. Thus, 20 people at $50 per hour for 680 hours is $680,000.

BBB. People data conversion. These data include information about those Indians who are considered to be part of the official enrollment. They also include information about data critical in determining who qualifies for judgement and per capita payments, such as enrollment date, birth date, and blood quantums. Other data includes alias and main names for the individuals. OTFM estimates a need for 10 people working for 680 hours at a rate of $50 per hour. Thus, the conversion costs are estimated to be 10 x 680 x $50 = $340,000.

CCC. LRIS data conversion. The land records information system (LRIS), tracks individual Indian land ownership. It tracks physical ownership rather than monetary ownership and is the equivalent of the county courthouse in mainstream America. Currently, there are no automated links between LRIS and IRMS/IIM, even though they are procedurally interdependent. Also, OTFM staff have voiced complaints that LRIS is often not available for trust asset management due to hardware problems or communications problems or back-logs in land title and beneficial ownership determinations.

These estimates have been among the most difficult to make. The IT staff at BIA report that last year's estimates for this task were projected to range between $1,500,000 and $2,000,000. OTFM's current projection is for $1,000,00 for data conversion for LRIS. However, it is important to bear in mind the tremendous problems inherent in this conversion process. Cleaning up these data files will require data entry of all CUFF records (records that are literally still paper-bound in staff desk drawers in many instances) and will require matching existing information in the database to actual title records, as well as to owner information contained in other data bases. For these reasons, we believe a much larger cost will be incurred and we estimate it to be at least $1,500,000.

DDD. Imaging data conversion. Costs must be incurred in the process of imaging title and ownership documents. These tasks will necessarily be performed by an outside contractor, given the highly specialized requirements of the task. This will involve travelling to all agency and area locations and imaging appropriate title and ownership documents. OTFM estimated the cost to be $1,000,000. Again, we believe this to be a highly conservative estimate given the potential problems associated with addressing the fractionated interest problems and the fact that finding a suitable vendor may not be easy. We therefore believe a more realistic projection to be $2,000,000.

EEE. Systems integration and implementation. This item reflects costs associated with integrating OTFM (BIA) diverse software applications, customizing vendor software to meet OTFM unique requirements, and training end-users on specialized software systems--separate and apart from WAN-related products. While difficult to predict in abstract terms--before a full systems requirements study has been concluded--these costs should not be under-estimated. Well-established vendors tell us that the costs could range between $3-$9 million, depending on many factors. For the purposes of this model, we have assumed $6 million--one sixth of which is allocated for support of tribal access. $5 million is reflected in this category and the remaining $1 million is included in Item FFF.

FFF. Access by individuals and tribes. If we assume universal access by all tribes--approximately 300--to OTFM's trust and asset management system, this would constitute a roughly 15% increase in the total number of end-users, assuming that each tribe has only one client work station accessing OTFM's databases. Using this percentage, this would add $5,854,440 over the first 3-year period.

Total number of end-users	2,060
End-user support staff	41
Application development support	10
Total number of Agencies	87
Total number of Area offices	12
Total Regional/HQ/other	11
Total Site Offices	110

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
A	No. existing client PC workstations	824			
B	Existing client PC workstations upgrade	$ 82,400	$ 82,400	$ 82,400	$ 247,200
C	Existing client PC workstations maintenance	$ 123,600	$ 123,600	$ 123,600	$ 370,800
	Sub-total	$ 206,000	$ 206,000	$ 206,000	$ 618,000
D	No. new client PC workstations	1,236	$ -	$ -	-
E	New client PC workstation cost	$ 3,090,000	$ -	$ -	$ 3,090,000
F	New client PC workstation upgrade	$ -	$ 123,600	$ 123,600	$ 247,200
G	New client PC workstation maintenance	$ -	$ 185,400	$ 185,400	$ 370,800
	Sub-total	$ 3,090,000	$ 309,000	$ 309,000	$ 3,708,000
H	New Client PC workstation software: WfWG	$ 43,260	$ -	$ -	$ 43,260
I	Workstation software upgrade	$ -	$ -	$ 185,400	$ 185,400
J	Office suite software	$ 370,800	$ -	$ -	$ 370,800
K	Office suite software mntc./upgrades	$ -	$ 55,620	$ 55,620	$ 111,240
L	Documentation/Distribution	$ 33,000	$ -	$ -	$ 33,000
M	Host access software	$ 206,000	$ -	$ -	$ 206,000
	Sub-total	$ 653,060	$ 55,620	$ 241,020	$ 949,700
N	LAN wiring	$ 515,000	$ -	$ -	$ 515,000
O	Hubs/routers	$ 553,500	$ -	$ -	$ 553,500
P	Communications	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 3,670,500
	Sub-total	$ 2,292,000	$ 1,223,500	$ 1,223,500	$ 4,739,000
Q	Laser printers	$ 309,600	$ -	$ -	$ 309,600
R	Laser printer upgrade/replace	$ -	$ 30,960	$ 30,960	$ 61,920
S	Laser printer maintenance	$ 61,920	$ 61,920	$ 61,920	$ 185,760
	Sub-total	$ 371,520	$ 92,880	$ 92,880	$ 557,280
T	Work group server hardware	$ 478,500		$ -	$ 478,500
U	Work group server upgrade	$ -	$ 23,925	$ 23,925	$ 47,850
V	Work group server maintenance	$ -	$ 28,710	$ 28,710	$ 57,420
	Sub-total	$ 478,500	$ 52,635	$ 52,635	$ 583,770
W	Work group server software	$ 52,200	$ -	$ -	$ 52,200
X	Upgrade/maintenance	$ -	$ 7,830	$ 7,830	$ 15,660
	Sub-total	$ 52,200	$ 7,830	$ 7,830	$ 67,860

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
Y	Primary server hardware	$ 392,000	$ -	$ -	$ 392,000
Z	Upgrade	$ -	$ 19,600	$ 19,600	$ 39,200
AA	Maintenance	$ -	$ 23,520	$ 23,520	$ 47,040
BB	Environmentals	$ 15,000	$ 15,000	$ 15,000	$ 45,000
	Sub-total	**$ 407,000**	**$ 58,120**	**$ 58,120**	**$ 523,240**
CC	Primary server software	$ 47,040	$ 47,040	$ 47,040	$ 141,120
DD	Upgrade	$ -	$ 2,352	$ 2,352	$ 4,704
EE	Maintenance	$ 7,997	$ 7,997	$ 7,997	$ 23,990
	Sub-total	**$ 55,037**	**$ 57,389**	**$ 57,389**	**$ 169,814**
FF	Trust Management/Indv. Acct. System	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 14,400,000
GG	Lease Management/Accts. Receivable System	$ 900,000	$ 100,000	$ 100,000	$ 1,100,000
GG.1	Maintenance/Support and Upgrades		$ 63,000	$ 63,000	$ 126,000
HH	Land Management System	$ 503,000			$ 503,000
HH.1	Maintenance/Support and Upgrades		$ 50,300	$ 50,300	$ 100,600
	Sub-total	**$ 6,203,000**	**$ 4,963,000**	**$ 4,963,000**	**$ 16,129,000**
II	Primary server RDB	$ 85,000		$ -	$ 85,000
JJ	Upgrade/maintenance	$ -	$ 17,000	$ 17,000	$ 34,000
KK	Sys. mgmt. and application dev. SW and tools	$ 352,350	$ -	$ -	$ 352,350
LL	Upgrade/maintenance	$ -	$ 88,088	$ 88,088	$ 176,175
	Sub-total	**$ 437,350**	**$ 105,088**	**$ 105,088**	**$ 647,525**
MM	End-User support labor	$ 2,870,000	$ 2,884,000	$ 2,884,000	$ 8,638,000
NN	Application development labor	$ 900,000	$ 900,000	$ 900,000	$ 2,700,000
	Sub-total	**$ 3,770,000**	**$ 3,784,000**	**$ 3,784,000**	**$ 11,338,000**
OO	Primary server operation labor	$ 144,883	$ 144,883	$ 144,883	$ 434,650
PP	Work group server operations labor	$ 175,131	$ 175,131	$ 175,131	$ 525,393
	Sub-total	**$ 320,014**	**$ 320,014**	**$ 320,014**	**$ 960,043**

	ITEM	Year 1	Year 2	Year 3	3 YEAR TOTAL
QQ	Administrative support labor	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 3,708,000
	Sub-total	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 3,708,000
RR	End-user training	$ 1,545,000	$ 618,000	$ 618,000	$ 2,781,000
SS	End-user support training	$ 269,370	$ 74,825	$ 74,825	$ 419,020
TT	A/D support training	$ 96,000	$ 16,000	$ 16,000	$ 128,000
	Sub-total	$ 1,910,370	$ 708,825	$ 708,825	$ 3,328,020
UU	External professional services	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 7,680,000
	Sub-total	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 7,680,000
VV	End-user supplies/facilities	$ 309,000	$ 309,000	$ 309,000	$ 927,000
WW	Transportation	$ 41,200	$ 41,200	$ 41,200	$ 123,600
XX	Travel	$ 165,000	$ 165,000	$ 165,000	$ 495,000
	Sub-total	$ 515,200	$ 515,200	$ 515,200	$ 1,545,600
	Data Conversion (*assumes conversion is done by contractor*)				
YY	IIM	$ 500,000	$ -	$ -	$ 500,000
ZZ	Lease	$ 250,000	$ -	$ -	$ 250,000
AAA	Ownership	$ 680,000	$ -	$ -	$ 680,000
BBB	People	$ 340,000	$ -	$ -	$ 340,000
CCC	LRIS	$ 1,500,000	$ -	$ -	$ 1,500,000
	Sub-total	$ 3,270,000	$ -	$ -	$ 3,270,000
DDD	Imaging	$ 2,000,000	$ 200,000	$ 200,000	$ 2,400,000
	Sub-total	$ 2,000,000	$ 200,000	$ 200,000	$ 2,400,000
EEE	System Integration/Implementation Costs	$ 2,500,000	$ 2,500,000		$ 5,000,000
	Sub-total	$ 2,500,000	$ 2,500,000	$ -	$ 5,000,000
FFF	Access by individual Indians and Tribes	$ 5,854,440	$ -	$ -	$ 5,854,440
	Sub-total	$ 5,854,440	$ -	$ -	$ 5,854,440
	GRAND TOTALS	$ 39,181,891	$ 18,455,101	$ 18,140,501	$ 73,777,292

Total number of end-users	2,060
End user support staff	41
Application development support	10
Total number of Agencies	87
Total number of Area offices	12
Total Regional/HQ/other	11
Total Site Offices	110

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
A	No. existing client PC workstations	824					
B	Existing client PC workstations upgrade	$ 82,400	$ 82,400	$ 82,400	$ 82,400	$ 82,400	$ 412,000
C	Existing client PC workstations maintenance	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 618,000
	Sub-total	$ 206,000	$ 206,000	$ 206,000	$ 206,000	$ 206,000	$ 1,030,000
D	No. new client PC workstations	1,236	-	-	-	-	
E	New client PC workstation cost	$ 3,090,000	$ -	$ -	$ -	$ -	$ 3,090,000
F	New client PC workstation upgrade	$ -	$ 123,600	$ 123,600	$ 123,600	$ 123,600	$ 494,400
G	New client PC workstation maintenance	$ -	$ 185,400	$ 185,400	$ 185,400	$ 185,400	$ 741,600
	Sub-total	$ 3,090,000	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 4,326,000
H	New Client PC workstation software: WfWG	$ 43,260	$ -	$ -	$ -	$ -	$ 43,260
I	Workstation software upgrade	$ -	$ -	$ 185,400	$ -	$ 185,400	$ 370,800
J	Office suite software	$ 370,800	$ -	$ -	$ -	$ -	$ 370,800
K	Office suite software mntc./upgrades	$ -	$ 55,620	$ 55,620	$ 55,620	$ 55,620	$ 222,480
L	Documentation/Distribution	$ 33,000	$ -	$ -	$ -	$ -	$ 33,000
M	Host access software	$ 206,000	$ -	$ -	$ -	$ -	$ 206,000
	Sub-total	$ 653,060	$ 55,620	$ 241,020	$ 55,620	$ 241,020	$ 1,246,340
N	LAN wiring	$ 515,000	$ -	$ -	$ -	$ -	$ 515,000
O	Hubs/routers	$ 553,500	$ -	$ -	$ -	$ -	$ 553,500
P	Communications	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 6,117,500
	Sub-total	$ 2,292,000	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 1,223,500	$ 7,186,000
Q	Laser printers	$ 309,600	$ -	$ -	$ -	$ -	$ 309,600.00
R	Laser printer upgrade/replace	$ -	$ 30,960	$ 30,960	$ 30,960	$ 30,960	$ 123,840
S	Leser printer maintenance	$ 61,920	$ 61,920	$ 61,920	$ 61,920	$ 61,920	$ 309,600
	Sub-total	$ 371,520	$ 92,880	$ 92,880	$ 92,880	$ 92,880	$ 743,040
T	Work group server hardware	$ 478,500					$ 478,500
U	Work group server upgrade	$ -	$ 23,925	$ 23,925	$ 23,925	$ 23,925	$ 95,700
V	Work group server maintenance	$ -	$ 28,710	$ 28,710	$ 28,710	$ 28,710	$ 114,840
	Sub-total	$ 478,500	$ 52,635	$ 52,635	$ 52,635	$ 52,635	$ 689,040
W	Work group server software	$ 52,200	$ -	$ -	$ -	$ -	$ 52,200
X	Upgrade/maintenance	$ -	$ 7,830	$ 7,830	$ 7,830	$ 7,830	$ 31,320
	Sub-total	$ 52,200	$ 7,830	$ 7,830	$ 7,830	$ 7,830	$ 83,520

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
Y	Primary server hardware	$ 392,000	$ -	$ -	$ -	$ -	$ 392,000
Z	Upgrade	$ -	$ 19,600	$ 19,600	$ 19,600	$ 19,600	$ 78,400
AA	Maintenance	$ -	$ 23,520	$ 23,520	$ 23,520	$ 23,520	$ 94,080
BB	Environmentals	$ 15,000	$ 15,000	$ 15,000	$ -	$ -	$ 45,000
	Sub-total	$ 407,000	$ 58,120	$ 58,120	$ 43,120	$ 43,120	$ 609,480
CC	Primary server software	$ 47,040	$ 47,040	$ 47,040	$ -	$ -	$ 141,120
DD	Upgrade	$ -	$ 2,352	$ 2,352	$ 2,352	$ 2,352	$ 9,408
EE	Maintenance	$ 7,997	$ 7,997	$ 7,997	$ 7,997	$ 7,997	$ 39,984
	Sub-total	$ 55,037	$ 57,389	$ 57,389	$ 10,348	$ 10,348	$ 190,512
FF	Trust Management/Indv. Acct. Systems	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 4,800,000	$ 24,000,000
GG	Lease Management Systems	$ 900,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 1,300,000
GG 1	Maintenance/Support and Upgrades		$ 63,000	$ 63,000	$ 63,000	$ 63,000	$ 252,000
HH	Land Management System	$ 503,000					$ 503,000
HH 1	Maintenance/Support and Upgrades		$ 50,300	$ 50,300	$ 50,300	$ 50,300	$ 201,200
	Sub-total	$ 6,203,000	$ 6,013,300	$ 6,013,300	$ 6,013,300	$ 6,013,300	$ 26,256,200
II	Primary server RDB	$ 85,000	$ -	$ -	$ -	$ -	$ 85,000
JJ	Upgrade/maintenance	$ -	$ 17,000	$ 17,000	$ 17,000	$ 17,000	$ 68,000
KK	Sys. mgmt. and application dev. SW and tools	$ 352,350	$ -	$ -	$ -	$ -	$ 352,350
LL	Upgrade/maintenance	$ -	$ 88,088	$ 88,088	$ 88,088	$ 88,088	$ 352,350
	Sub-total	$ 437,350	$ 105,088	$ 105,088	$ 105,088	$ 105,088	$ 857,700
MM	End-User support labor	$ 2,870,000	$ 2,884,000	$ 2,884,000	$ 2,884,000	$ 2,884,000	$ 14,406,000
NN	Application development labor	$ 900,000	$ 900,000	$ 900,000	$ 900,000	$ 900,000	$ 4,500,000
	Sub-total	$ 3,770,000	$ 3,784,000	$ 3,784,000	$ 3,784,000	$ 3,784,000	$ 18,906,000
OO	Primary server operation labor	$ 144,883	$ 144,883	$ 144,883	$ 144,883	$ 144,883	$ 724,416
PP	Work group server operations labor	$ 175,131	$ 175,131	$ 175,131	$ 175,131	$ 175,131	$ 875,655
	Sub-total	$ 320,014	$ 320,014	$ 320,014	$ 320,014	$ 320,014	$ 1,600,071

	ITEM	Year 1	Year 2	Year 3	Year 4	Year 5	5 YEAR TOTAL
QQ	Administrative support labor	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 6,180,000
	Sub-total	$ 1,236,000	$ 1,236,000	$ 1,236,000	$ 1,236,000.00	$ 1,236,000.00	$ 6,180,000
RR	End-user training	$ 1,545,000	$ 618,000	$ 618,000	$ 618,000	$ 618,000	$ 4,017,000
SS	End-user support training	$ 269,370	$ 74,825	$ 74,825	$ 74,825	$ 74,825	$ 568,670
TT	A/D support training	$ 96,000	$ 16,000	$ 16,000	$ 16,000	$ 16,000	$ 160,000
	Sub-total	$ 1,910,370	$ 708,825	$ 708,825	$ 708,825	$ 708,825	$ 4,745,670
UU	External professional services	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 11,800,000
	Sub-total	$ 3,560,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 2,060,000	$ 11,800,000
VV	End-user supplies/facilities	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 309,000	$ 1,545,000
WW	Transportation	$ 41,200	$ 41,200	$ 41,200	$ 41,200	$ 41,200	$ 206,000
XX	Travel	$ 165,000	$ 165,000	$ 165,000	$ 165,000	$ 165,000	$ 825,000
	Sub-total	$ 515,200	$ 515,200	$ 515,200	$ 515,200	$ 515,200	$ 2,575,000
	Data Conversion (*essumes conversion is done by contractor*)						
YY	IIM	$ 500,000	$ -	$ -	$ -	$ -	$ 500,000
ZZ	Leese	$ 250,000	$ -	$ -	$ -	$ -	$ 250,000
AAA	Ownership	$ 680,000	$ -	$ -	$ -	$ -	$ 680,000
BBB	People	$ 340,000	$ -	$ -	$ -	$ -	$ 340,000
CCC	LRIS	$ 1,500,000	$ -	$ -	$ -	$ -	$ 1,500,000
	Sub-total	$ 3,270,000	$ -	$ -	$ -	$ -	$ 3,270,000
DDD	Imaging	$ 2,000,000	$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 2,800,000
	Sub-total	$ 2,000,000	$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 2,800,000
EEE	System Integration/Implementation Costs	$ 2,500,000	$ 2,500,000	$ -	$ -	$ -	$ 5,000,000
	Sub-total	$ 2,500,000	$ 2,500,000	$ -	$ -	$ -	$ 5,000,000
FFF	Access by Individual Indians and Tribes	$ 8,352,280					$ 8,352,280
	Sub-total	$ 8,352,280	$ -	$ -	$ -	$ -	$ 8,352,280
	GRAND TOTALS	$ 41,679,531	$ 18,606,401	$ 16,190,801	$ 16,943,361	$ 16,128,761	$ 108,447,853

Union Calendar No.

104TH CONGRESS
2D SESSION

H. R. 3828

[Report No. 104–]

To amend the Indian Child Welfare Act of 1978, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1996

Mr. YOUNG of Alaska (for himself, Mr. MILLER of California, and Mr. RICHARDSON) introduced the following bill; which was referred to the Committee on Resources

September , 1996

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To amend the Indian Child Welfare Act of 1978, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Indian Child Welfare Act Amendments of 1996".

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 2. EXCLUSIVE JURISDICTION.

Section 101(a) (25 U.S.C. 1911(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by striking the last sentence and inserting the following:

"(2) An Indian tribe shall retain exclusive jurisdiction over any child custody proceeding that involves an Indian child, notwithstanding any subsequent change in the residence or domicile of the Indian child, in any case in which the Indian child—

"(A) resides or is domiciled within the reservation of the Indian tribe and is made a ward of a tribal court of that Indian tribe; or

"(B) after a transfer of jurisdiction is carried out under subsection (b), becomes a ward of a tribal court of that Indian tribe.".

SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.

Section 101(c) (25 U.S.C. 1911(c)) is amended by striking "In any State court proceeding" and inserting

"Except as provided in section 103(e), in any State court proceeding".

SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

Section 103(a) (25 U.S.C. 1913(a)) is amended—

(1) by inserting "(1)" before "Where";

(2) by striking "foster care placement" and inserting "foster care or preadoptive or adoptive placement";

(3) by striking "judge's certificate that the terms" and inserting the following: "judge's certificate that—

"(A) the terms";

(4) by striking "or Indian custodian." and inserting "or Indian custodian; and";

(5) by inserting after subparagraph (A), as designated by paragraph (3) of this subsection, the following new subparagraph:

"(B) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has informed the natural parents of the placement options with respect to the child involved, has informed those parents of the applicable provisions of this Act, and has certified that the natural parents will

be notified within 10 days of any change in the adoptive placement.";

(6) by striking "The court shall also certify" and inserting the following:

"(2) The court shall also certify";

(7) by striking "Any consent given prior to," and inserting the following:

"(3) Any consent given prior to,"; and

(8) by adding at the end the following new paragraph:

"(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act.".

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting "(1)" before "Any"; and

(2) by adding at the end the following new paragraphs:

"(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

"(A) no final decree of adoption has been entered; and

"(B)(i) the adoptive placement specified by the parent terminates; or

"(ii) the revocation occurs before the later of the end of—

"(I) the 180-day period beginning on the date on which the Indian child's tribe receives written notice of the adoptive placement provided in accordance with the requirements of subsections (c) and (d); or

"(II) the 30-day period beginning on the date on which the parent who revokes consent receives notice of the commencement of the adoption proceeding that includes an explanation of the revocation period specified in this subclause.

"(3) The Indian child with respect to whom a revocation under paragraph (2) is made shall be returned to the parent who revokes consent immediately upon an effective revocation under that paragraph.

"(4) Subject to paragraph (6), if, by the end of the applicable period determined under subclause (I) or (II) of paragraph (2)(B)(ii), a consent to adoption or voluntary termination of parental rights has not been revoked, beginning after that date, a parent may revoke such a consent only—

"(A) pursuant to applicable State law; or

"(B) if the parent of the Indian child involved petitions a court of competent jurisdiction, and the court finds that the consent to adoption or voluntary termination of parental rights was obtained through fraud or duress.

"(5)(A) Subject to paragraph (6), if a consent to adoption or voluntary termination of parental rights is revoked under paragraph (4)(B), with respect to the Indian child involved—

"(i) in a manner consistent with paragraph (3), the child shall be returned immediately to the parent who revokes consent; and

"(ii) if a final decree of adoption has been entered, that final decree shall be vacated.

"(6) Except as otherwise provided under applicable State law, no adoption that has been in effect for a period longer than or equal to 2 years may be invalidated under this subsection.".

SEC. 6. NOTICE TO INDIAN TRIBES.

Section 103(c) (25 U.S.C. 1913(c)) is amended to read as follows:

"(c)(1) A party that seeks the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child shall provide

written notice of the placement or proceeding to the Indian child's tribe. A notice under this subsection shall be sent by registered mail (return receipt requested) to the Indian child's tribe, not later than the applicable date specified in paragraph (2) or (3).

"(2)(A) Except as provided in paragraph (3), notice shall be provided under paragraph (1) in each of the following cases:

"(i) Not later than 100 days after any foster care placement of an Indian child occurs.

"(ii) Not later than 5 days after any preadoptive or adoptive placement of an Indian child.

"(iii) Not later than 10 days after the commencement of any proceeding for a termination of parental rights to an Indian child.

"(iv) Not later than 10 days after the commencement of any adoption proceeding concerning an Indian child.

"(B) A notice described in subparagraph (A)(ii) may be provided before the birth of an Indian child if a party referred to in paragraph (1) contemplates a specific adoptive or preadoptive placement.

"(3) If, after the expiration of the applicable period specified in paragraph (2), a party referred to in para-

graph (1) discovers that the child involved may be an Indian child—

"(A) the party shall provide notice under paragraph (1) not later than 10 days after the discovery; and

"(B) any applicable time limit specified in subsection (e) shall apply to the notice provided under subparagraph (A) only if the party referred to in paragraph (1) has, on or before commencement of the placement made reasonable inquiry concerning whether the child involved may be an Indian child.".

SEC. 7. CONTENT OF NOTICE.

Section 103(d) (25 U.S.C. 1913(d)) is amended to read as follows:

"(d) Each written notice provided under subsection (c) shall contain the following:

"(1) The name of the Indian child involved, and the actual or anticipated date and place of birth of the Indian child.

"(2) A list containing the name, address, date of birth, and (if applicable) the maiden name of each Indian parent and grandparent of the Indian child, if—

"(A) known after inquiry of—

"(i) the birth parent placing the child or relinquishing parental rights; and

"(ii) the other birth parent (if available); or

"(B) otherwise ascertainable through other reasonable inquiry.

"(3) A list containing the name and address of each known extended family member (if any), that has priority in placement under section 105.

"(4) A statement of the reasons why the child involved may be an Indian child.

"(5) The names and addresses of the parties involved in any applicable proceeding in a State court.

"(6)(A) The name and address of the State court in which a proceeding referred to in paragraph (5) is pending, or will be filed; and

"(B) the date and time of any related court proceeding that is scheduled as of the date on which the notice is provided under this subsection.

"(7) If any, the tribal affiliation of the prospective adoptive parents.

"(8) The name and address of any public or private social service agency or adoption agency involved.

"(9) An identification of any Indian tribe with respect to which the Indian child or parent may be a member.

"(10) A statement that each Indian tribe identified under paragraph (9) may have the right to intervene in the proceeding referred to in paragraph (5).

"(11) An inquiry concerning whether the Indian tribe that receives notice under subsection (c) intends to intervene under subsection (e) or waive any such right to intervention.

"(12) A statement that, if the Indian tribe that receives notice under subsection (c) fails to respond in accordance with subsection (e) by the applicable date specified in that subsection, the right of that Indian tribe to intervene in the proceeding involved shall be considered to have been waived by that Indian tribe.".

SEC. 8. INTERVENTION BY INDIAN TRIBE.

Section 103 (25 U.S.C. 1913) is amended by adding at the end the following new subsections:

"(e)(1) The Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court only if—

"(A) in the case of a voluntary proceeding to terminate parental rights, the Indian tribe filed a notice of intent to intervene or a written objection to the termination, not later than 30 days after receiving notice that was provided in accordance with the requirements of subsections (c) and (d); or

"(B) in the case of a voluntary adoption proceeding, the Indian tribe filed a notice of intent to intervene or a written objection to the adoptive placement, not later than the later of—

"(i) 90 days after receiving notice of the adoptive placement that was provided in accordance with the requirements of subsections (c) and (d); or

"(ii) 30 days after receiving a notice of the voluntary adoption proceeding that was provided in accordance with the requirements of subsections (c) and (d).

"(2)(A) Except as provided in subparagraph (B), the Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court in any case in which the Indian tribe did not receive written notice provided in accordance with the requirements of subsections (c) and (d).

"(B) An Indian tribe may not intervene in any voluntary child custody proceeding in a State court if the Indian tribe gives written notice to the State court or any party involved of—

"(i) the intent of the Indian tribe not to intervene in the proceeding; or

"(ii) the determination by the Indian tribe that—

"(I) the child involved is not a member of, or is not eligible for membership in, the Indian tribe; or

"(II) neither parent of the child is a member of the Indian tribe.

"(3) If an Indian tribe files a motion for intervention in a State court under this subsection, the Indian tribe shall submit to the court, at the same time as the Indian tribe files that motion, a certification that includes a statement that documents, with respect to the Indian child involved, the membership or eligibility for membership of that Indian child in the Indian tribe under applicable tribal law.

"(f) Any act or failure to act of an Indian tribe under subsection (e) shall not—

"(1) affect any placement preference or other right of any individual under this Act;

"(2) preclude the Indian tribe of the Indian child that is the subject of an action taken by the Indian tribe under subsection (e) from intervening in a proceeding concerning that Indian child if a proposed adoptive placement of that Indian child is changed after that action is taken; or

"(3) except as specifically provided in subsection (e), affect the applicability of this Act.

"(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the Indian child's tribe receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

"(h) Notwithstanding any other provision of law (including any State law)—

"(1) a court may approve, as part of an adoption decree of an Indian child, an agreement that states that a birth parent, an extended family member, or the Indian child's tribe shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

"(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be considered to be grounds for setting aside a final decree of adoption.".

SEC. 9. FRAUDULENT REPRESENTATION.

Title I of the Indian Child Welfare Act of 1978 is amended by adding at the end the following new section:

"SEC. 114. FRAUDULENT REPRESENTATION.

"(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person—

"(1) knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

"(A) a child is an Indian child; or

"(B) a parent is an Indian; or

"(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

"(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudu-

lent statement or entry relating to a material fact described in paragraph (1).

"(b) CRIMINAL SANCTIONS.—The criminal sanctions for a violation referred to in subsection (a) are as follows:

"(1) For an initial violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 1 year, or both.

"(2) For any subsequent violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 5 years, or both.".

Union Calendar No.

104TH CONGRESS
2D SESSION

H. R. 2710

[Report No. 104–]

To provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 1995

Mr. RIGGS introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER , 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Hoopa Valley Reservation South Boundary Correction Act".~~

~~SEC. 2. LAND TRANSFER TO RESERVATION.~~

~~(a) IN GENERAL.—All right, title, and interest of the United States in and to the lands described in subsection (b) shall hereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe and shall be part of the Hoopa Valley Reservation.~~

~~(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are those portions of Townships 7 North and 8 North, Ranges 5 East and 6 East, Humboldt Meridian, California, within a boundary beginning at a point on the current south boundary of the Hoopa Valley Indian Reservation, marked and identified as "Post H.V.R. No. 8" on the Plat of the Hoopa Valley Indian Reservation prepared from a field survey conducted by C.T. Bissel, Augustus T. Smith and C.A. Robinson, Deputy Surveyors, approved by the Surveyor General, H. Pratt, March 18, 1892, and extending from said point on a bearing of north 72 degrees 30 minutes east, until intersecting with a line beginning at a point marked as "Post H.V.R. No. 3" on said survey and extending on a bearing of south 15 degrees 59 minutes east, comprising 2,641 acres more or less.~~

~~SEC. 3. SURVEY.~~

~~The Secretary of the Interior, acting through the Bureau of Land Management, shall survey and monument that portion of the boundary of the Hoopa Valley Reserva-~~

~~tion established by the addition of lands made by section 2.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hoopa Valley Reservation South Boundary Adjustment Act".

SEC. 2. LAND TRANSFER TO RESERVATION.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the lands described in subsection (b) shall hereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe and shall be part of the Hoopa Valley Reservation.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are those portions of Townships 7 North and 8 North, Ranges 5 East and 6 East, Humboldt Meridian, California, within a boundary beginning at a point on the current south boundary of the Hoopa Valley Indian Reservation, marked and identified as "Post H.V.R. No. 8" on the Plat of the Hoopa Valley Indian Reservation prepared from a field survey conducted by C.T. Bissel, Augustus T. Smith and C.A. Robinson, Deputy Surveyors, approved by the Surveyor General, H. Pratt, March 18, 1892, and extending from said point on a bearing of north 72 degrees 30 minutes east, until intersecting with a line beginning at a point marked as "Post H.V.R. No. 3" on said survey

and extending on a bearing of south 15 degrees 59 minutes east, comprising 2,641 acres more or less.

(c) BOUNDARY ADJUSTMENT.—The boundary of the Six Rivers National Forest shall be adjusted to exclude the lands to be held in trust for the benefit of the Hoopa Valley Tribe pursuant to this section.

SEC. 3. SURVEY.

The Secretary of the Interior, acting through the Bureau of Land Management, shall survey and monument that portion of the boundary of the Hoopa Valley Reservation established by the addition of lands made by section 2.

Union Calendar No.

104TH CONGRESS
2D SESSION

H. R. 3640

[Report No. 104–]

To provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1996

Mr. BONO (for himself, Mr. HUNTER, Mr. BROWN of California, Mr. CALVERT, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER , 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 13, 1996]

A BILL

To provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Torres-Martinez Desert Cahuilla Indians Claims Settlement Act".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that:

(1) In 1876, the Torres-Martinez Indian Reservation was created, reserving a single, 640-acre section of land in the Coachella Valley, California, north of the Salton Sink. The Reservation was expanded in 1891 by Executive Order, pursuant to the Mission Indian Relief Act of 1891, adding about 12,000 acres to the original 640-acre reservation.

(2) Between 1905 and 1907, flood waters of the Colorado River filled the Salton Sink, creating the Salton Sea, inundating approximately 2,000 acres of the 1891 reservation lands.

(3) In 1909 an additional 12,000 acres of land, 9,000 of which were then submerged under the Salton Sea, were added to the reservation under a Secretarial Order issued pursuant to a 1907 amendment of the Mission Indian Relief Act. Due to receding water levels in the Salton Sea through the process of evaporation, at the time of the 1909 enlargement of the reservation, there were some expectations that the Salton Sea would recede within a period of 25 years.

(4) Through the present day, the majority of the lands added to the reservation in 1909 remain inundated due in part to the flowage of natural runoff and drainage water from the irrigation systems of the Imperial, Coachella, and Mexicali Valleys into the Salton Sea.

(5) In addition to those lands that are inundated, there are also tribal and individual Indian lands located on the perimeter of the Salton Sea that are not currently irrigable due to lack of proper drainage.

(6) In 1982, the United States brought an action in trespass entitled "United States of America, in its own right and on behalf of Torres-Martinez Band of Mission Indians and the Allottees therein v. The Imperial Irrigation District and Coachella Valley Water District", Case No. 82–1790 K (M) (hereafter in this section referred to as the "U.S. Suit") on behalf of the Torres-Martinez Indian Tribe and affected Indian allottees against the two water districts seeking damages related to the inundation of tribal- and allottee-owned lands and injunctive relief to prevent future discharge of water on such lands.

(7) On August 20, 1992, the Federal District Court for the Southern District of California entered

a judgment in the U.S. Suit requiring the Coachella Valley Water District to pay $212,908.41 in past and future damages and the Imperial Irrigation District to pay $2,795,694.33 in past and future damages in lieu of the United States' request for a permanent injunction against continued flooding of the submerged lands.

(8) The United States, the Coachella Valley Water District, and the Imperial Irrigation District have filed notices of appeal with the United States Court of Appeals for the Ninth Circuit from the district court's judgment in the U.S. Suit (Numbers 93–55389, 93–55398, and 93–55402), and the Tribe has filed a notice of appeal from the district court's denial of its motion to intervene as a matter of right (No. 92–55129).

(9) The Court of Appeals for the Ninth Circuit has stayed further action on the appeals pending the outcome of settlement negotiations.

(10) In 1991, the Tribe brought its own lawsuit, Torres-Martinez Desert Cahuilla Indians, et al., v. Imperial Irrigation District, et al., Case No. 91–1670 J (LSP) (hereafter in this section referred to as the "Indian Suit") in the United States District Court, Southern District of California, against the two water

districts, and amended the complaint to include as a plaintiff, Mary Resvaloso, in her own right, and as class representative of all other affected Indian allotment owners.

(11) The Indian Suit has been stayed by the District Court to facilitate settlement negotiations.

(b) PURPOSE.—The purpose of this Act is to facilitate and implement the settlement agreement negotiated and executed by the parties to the U.S. Suit and Indian Suit for the purpose of resolving their conflicting claims to their mutual satisfaction and in the public interest.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "Tribe" means the Torres-Martinez Desert Cahuilla Indians, a federally recognized Indian tribe with a reservation located in Riverside and Imperial Counties, California.

(2) The term "allottees" means those individual Tribe members, their successors, heirs, and assigns, who have individual ownership of allotted Indian trust lands within the Torres-Martinez Indian Reservation.

(3) The term "Salton Sea" means the inland body of water located in Riverside and Imperial counties which serves as a drainage reservoir for

water from precipitation, natural runoff, irrigation return flows, wastewater, floods, and other inflow from within its watershed area.

(4) The term "Settlement Agreement" means the Agreement of Compromise and Settlement Concerning Claims to Lands of the United States Within and on the Perimeter of the Salton Sea Drainage Reservoir Held in Trust for the Torres-Martinez Indians executed on June 18, 1996.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "permanent flowage easement" means the perpetual right by the water districts to use the described lands in the Salton Sink within and below the minus 220-foot contour as a drainage reservoir to receive and store water from their respective water and drainage systems, including flood water, return flows from irrigation, tail water, leach water, operational spills and any other water which overflows and floods such lands, originating from lands within such water districts.

SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.

The United States hereby approves, ratifies, and confirms the Settlement Agreement.

SEC. 5. SETTLEMENT FUNDS.

(a) ESTABLISHMENT OF TRIBAL AND ALLOTTEES SETTLEMENT TRUST FUNDS ACCOUNTS.—

(1) IN GENERAL.—There are established in the Treasury of the United States three settlement trust fund accounts to be known as the "Torres-Martinez Settlement Trust Funds Account", the "Torres-Martinez Allottees Settlement Account I", and the "Torres-Martinez Allottees Settlement Account II", respectively.

(2) AVAILABILITY.—Amounts held in the Torres-Martinez Settlement Trust Funds Account, the Torres-Martinez Allottees Settlement Account I, and the Torres-Martinez Allottees Settlement Account II shall be available to the Secretary for distribution to the Tribe and affected allottees in accordance with subsection (c).

(b) CONTRIBUTIONS TO THE SETTLEMENT TRUST FUNDS.—

(1) IN GENERAL.—Amounts paid to the Secretary for deposit into the trust fund accounts established by subsection (a) shall be allocated among and deposited in the trust accounts in the amounts determined by the tribal-allottee allocation provisions of the Settlement Agreement.

(2) CASH PAYMENTS BY COACHELLA VALLEY WATER DISTRICT.—Within the time, in the manner, and upon the conditions specified in the Settlement Agreement, the Coachella Valley Water District shall pay the sum of $337,908.41 to the United States for the benefit of the Tribe and any affected allottees.

(3) CASH PAYMENTS BY IMPERIAL IRRIGATION DISTRICT.—Within the time, in the manner, and upon the conditions specified in the Settlement Agreement, the Imperial Irrigation District shall pay the sum of $3,670,694.33 to the United States for the benefit of the Tribe and any affected allottees.

(4) CASH PAYMENTS BY THE UNITED STATES.—Within the time and upon the conditions specified in the Settlement Agreement, the United States shall pay into the three separate tribal and allottee trust fund accounts the total sum of $10,200,000, of which sum—

(A) $4,200,000 shall be provided from moneys appropriated by Congress under section 1304 of title 31, United States Code, the conditions of which are deemed to have been met, including those of section 2414 of title 28, United States Code; and

(B) $6,000,000 shall be provided from moneys appropriated by Congress for this specific purpose to the Secretary.

(5) ADDITIONAL PAYMENTS.—In the event that any of the sums described in paragraphs (2) or (3) are not timely paid by the Coachella Valley Water District or the Imperial Irrigation District, as the case may be, the delinquent payor shall pay an additional sum equal to 10 percent interest annually on the amount outstanding daily, compounded yearly on December 31 of each respective year, until all outstanding amounts due have been paid in full.

(6) SEVERALLY LIABLE FOR PAYMENTS.—The Coachella Valley Water District, the Imperial Irrigation District, and the United States shall each be severally liable, but not jointly liable, for its respective obligation to make the payments specified by this subsection.

(c) ADMINISTRATION OF SETTLEMENT TRUST FUNDS.—The Secretary shall administer and distribute funds held in the Torres-Martinez Settlement Trust Funds Account, the Torres-Martinez Allottees Settlement Account I, and ~~the~~ Torres-Martinez Allottees Settlement Account II in accordance with the terms and conditions of the Settlement Agreement.

SEC. 6. TRUST LAND ACQUISITION AND STATUS.

(a) ACQUISITION AND PLACEMENT OF LANDS INTO TRUST.—

(1) IN GENERAL.—The Secretary shall convey into trust status lands purchased or otherwise acquired by the Tribe within the areas described in paragraphs (2) and (3) in an amount not to exceed 11,800 acres in accordance with the terms, conditions, criteria, and procedures set forth in the Settlement Agreement and this Act. Subject to such terms, conditions, criteria, and procedures, all lands purchased or otherwise acquired by the Tribe and conveyed into trust status for the benefit of the Tribe pursuant to the Settlement Agreement and this Act shall be considered as if such lands were so acquired in trust status in 1909 except as (i) to water rights as provided in subsection (c), and (ii) to valid rights existing at the time of acquisition pursuant to this Act.

(2) PRIMARY ACQUISITION AREA.—(A) The primary area within which lands may be acquired pursuant to paragraph (1) are those certain lands located in the Primary Acquisition Area, as defined in the Settlement Agreement. The amount of acreage that may be acquired from such area is 11,800 acres less the number of acres acquired and conveyed into trust by reason of paragraph (3).

(B) Lands may not be acquired under this paragraph if by majority vote of the governing body of the city within whose incorporated boundaries (as such boundaries exist on the date of the Settlement Agreement) objects to the Tribe's request to convey such lands into trust and notifies the Secretary of such objection in writing within 60 days of receiving a copy of the Tribe's request in accordance with the Settlement Agreement.

(3) SECONDARY ACQUISITION AREA.—

(A) Not more than 640 acres of land may be acquired pursuant to paragraph (1) from those certain lands located in the Secondary Acquisition Area, as defined in the Settlement Agreement.

(B) Lands referred to in subparagraph (A) may not be acquired pursuant to paragraph (1) if by majority vote—

(i) the governing body of the city whose incorporated boundaries the subject lands are situated within, or

(ii) the governing body of Riverside County, California, in the event that such lands are located within an unincorporated area,

formally objects to the Tribe's request to convey the subject lands into trust and notifies the Secretary of such objection in writing within 60 days of receiving a copy of the Tribe's request in accordance with the Settlement Agreement.

(b) RESTRICTIONS ON GAMING.—The Tribe shall have the right to conduct gaming on only one site within the lands acquired pursuant to subsection (a)(1) as more particularly provided in the Settlement Agreement.

(c) WATER RIGHTS.—All lands acquired by the Tribe under subsection (a) shall—

(1) be subject to all valid water rights existing at the time of tribal acquisition, including (but not limited to) all rights under any permit or license issued under the laws of the State of California to commence an appropriation of water, to appropriate water, or to increase the amount of water appropriated;

(2) be subject to the paramount rights of any person who at any time recharges or stores water in a ground water basin to recapture or recover the recharged or stored water or to authorize others to recapture or recover the recharged or stored water; and

(3) continue to enjoy all valid water rights appurtenant to the land existing immediately prior to the time of tribal acquisition.

SEC. 7. PERMANENT FLOWAGE EASEMENTS.

(a) CONVEYANCE OF EASEMENT TO COACHELLA VALLEY WATER DISTRICT.—

(1) TRIBAL INTEREST.—The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall convey to the Coachella Valley Water District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(2) UNITED STATES INTEREST.—The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, convey to Coachella Valley Water District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink,

in accordance with the terms and conditions of the Settlement Agreement.

(b) CONVEYANCE OF EASEMENT TO IMPERIAL IRRIGATION DISTRICT.—

(1) TRIBAL INTEREST.—The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(2) UNITED STATES.—The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

SEC. 8. SATISFACTION OF CLAIMS, WAIVERS, AND RELEASES.

(a) SATISFACTION OF CLAIMS.—The benefits available to the Tribe and the allottees under the terms and conditions of the Settlement Agreement and the provisions of this Act shall constitute full and complete satisfaction of the claims by the Tribe and the allottees arising from or related to the inundation and lack of drainage of tribal and allottee lands described in section 2 of this Act and further defined in the Settlement Agreement.

(b) APPROVAL OF WAIVERS AND RELEASES.—The United States hereby approves and confirms the releases and waivers required by the Settlement Agreement and this Act.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) ELIGIBILITY FOR BENEFITS.—Nothing in this Act or the Settlement Agreement shall affect the eligibility of the Tribe or its members for any Federal program or diminish the trust responsibility of the United States to the Tribe and its members.

(b) ELIGIBILITY FOR OTHER SERVICES NOT AFFECTED.—No payment pursuant to this Act shall result in the reduction or denial of any Federal services or programs to the Tribe or to members of the Tribe, to which they are entitled or eligible because of their status as a federally recognized Indian tribe or member of the Tribe.

(c) PRESERVATION OF EXISTING RIGHTS.—Except as provided in this Act or the Settlement Agreement, any right to which the Tribe is entitled under existing law shall not be affected or diminished.

(d) AMENDMENT OF SETTLEMENT AGREEMENT.—The Settlement Agreement may be amended from time to time in accordance with its terms and conditions.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided by subsection (b), this Act shall take effect on the date of enactment of this Act.

(b) EXCEPTION.—Sections 4, 5, 6, 7, and 8 shall take effect on the date on which the Secretary of the Interior determines the following conditions have been met:

(1) The Tribe agrees to the Settlement Agreement and the provisions of this Act and executes the releases and waivers required by the Settlement Agreement and this Act.

(2) The Coachella Valley Water District agrees to the Settlement Agreement and to the provisions of this Act.

(3) The Imperial Irrigation District agrees to the Settlement Agreement and to the provisions of this Act.

Union Calendar No.

104TH CONGRESS
2D SESSION

H. R. 2512

[Report No. 104–]

To provide for certain benefits of the Missouri River basin Pick-Sloan project to the Crow Creek Sioux Tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1995

Mr. JOHNSON of South Dakota introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER , 1996

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 19, 1995]

A BILL

To provide for certain benefits of the Missouri River basin Pick-Sloan project to the Crow Creek Sioux Tribe, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the Congress approved the Pick-Sloan Missouri River basin program by passing the Act of December 22, 1944, commonly known as the "Flood Control Act of 1944" (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.)—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Fort Randall and Big Bend projects are major components of the Pick-Sloan program, and contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) the Fort Randall and Big Bend projects overlie the western boundary of the Crow Creek Indian Reservation, having inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that

constituted the most productive agricultural and pastoral lands of the Crow Creek Sioux Tribe and the homeland of the members of the Tribe;

(4) Public Law 85–916 (72 Stat. 1766 et seq.) authorized the acquisition of 9,418 acres of Indian land on the Crow Creek Indian Reservation for the Fort Randall project and Public Law 87–735 (76 Stat. 704 et seq.) authorized the acquisition of 6,179 acres of Indian land on Crow Creek for the Big Bend project;

(5) Public Law 87–735 (76 Stat. 704 et seq.) provided for the mitigation of the effects of the Fort Randall and Big Bend projects on the Crow Creek Indian Reservation, by directing the Secretary of the Army to—

(A) replace, relocate, or reconstruct—

(i) any existing essential governmental and agency facilities on the reservation, including schools, hospitals, offices of the Public Health Service and the Bureau of Indian Affairs, service buildings, and employee quarters; and

(ii) roads, bridges, and incidental matters or facilities in connection with such facilities;

(B) provide for a townsite adequate for 50 homes, including streets and utilities (including water, sewage, and electricity), taking into account the reasonable future growth of the townsite; and

(C) provide for a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, offices of the Bureau of Indian Affairs, offices and quarters of the Public Health Service, and a combination gymnasium and auditorium;

(6) the requirements under Public Law 87–735 (76 Stat. 704 et seq.) with respect to the mitigation of the effects of the Fort Randall and Big Bend projects on the Crow Creek Indian Reservation have not been fulfilled;

(7) although the national economy has benefited from the Fort Randall and Big Bend projects, the economy on the Crow Creek Indian Reservation remains underdeveloped, in part as a consequence of the failure of the Federal Government to fulfill the obligations of the Federal Government under the laws referred to in paragraph (4);

(8) the economic and social development and cultural preservation of the Crow Creek Sioux Tribe will

be enhanced by increased tribal participation in the benefits of the Fort Randall and Big Bend components of the Pick-Sloan program; and

(9) the Crow Creek Sioux Tribe is entitled to additional benefits of the Pick-Sloan Missouri River basin program.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions shall apply:

(1) FUND.—The term "Fund" means the Crow Creek Sioux Tribe Infrastructure Development Trust Fund established under section 4(a).

(2) PLAN.—The term "plan" means the plan for socioeconomic recovery and cultural preservation prepared under section 5.

(3) PROGRAM.—The term "Program" means the power program of the Pick-Sloan Missouri River basin program, administered by the Western Area Power Administration.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) TRIBE.—The term "Tribe" means the Crow Creek Sioux Tribe of Indians, a band of the Great Sioux Nation recognized by the United States of America.

SEC. 4. ESTABLISHMENT OF CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

(a) CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.—There is established in the Treasury of the United States a fund to be known as the "Crow Creek Sioux Tribe Infrastructure Development Trust Fund".

(b) FUNDING.—Beginning with fiscal year 1997, and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to $27,500,000, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(c) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) ESTABLISHMENT OF ACCOUNT AND TRANSFER OF INTEREST.—The Secretary of the Treasury shall, in accordance with this subsection, transfer any interest that accrues on amounts deposited under subsection (b) into a separate account established by the

Secretary of the Treasury in the Treasury of the United States.

(2) PAYMENTS.—

(A) IN GENERAL.—Beginning with the fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Fund is equal to the amount specified in subsection (b), and for each fiscal year thereafter, all amounts transferred under paragraph (1) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with subparagraph (C).

(B) WITHDRAWAL AND TRANSFER OF FUNDS.—For each fiscal year specified in subparagraph (A), the Secretary of the Treasury shall withdraw amounts from the account established under such paragraph and transfer such amounts to the Secretary of the Interior for use in accordance with subparagraph (C). The Secretary of the Treasury may only withdraw funds from the account for the purpose specified in this paragraph.

(C) PAYMENTS TO TRIBE.—The Secretary of the Interior shall use the amounts transferred

under subparagraph (B) only for the purpose of making payments to the Tribe.

(D) USE OF PAYMENTS BY TRIBE.—The Tribe shall use the payments made under subparagraph (C) only for carrying out projects and programs pursuant to the plan prepared under section 5.

(3) PROHIBITION ON PER CAPITA PAYMENTS.—No portion of any payment made under this subsection may be distributed to any member of the Tribe on a per capita basis.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsection (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CULTURAL PRESERVATION.

(a) PLAN.—

(1) IN GENERAL.—The Tribe shall, not later than 2 years after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under section 4(d)(2). In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(2) REQUIREMENTS FOR PLAN COMPONENTS.—The plan shall, with respect to each component of the plan—

(A) identify the costs and benefits of that component; and

(B) provide plans for that component.

(b) CONTENT OF PLAN.—The plan shall include the following programs and components:

(1) EDUCATIONAL FACILITY.—The plan shall provide for an educational facility to be located on the Crow Creek Indian Reservation.

(2) COMPREHENSIVE INPATIENT AND OUTPATIENT HEALTH CARE FACILITY.—The plan shall provide for a comprehensive inpatient and outpatient health care facility to provide essential services that the Secretary of Health and Human Services, in consultation with the individuals and entities referred to in subsection (a)(1), determines to be—

(A) needed; and

(B) unavailable through existing facilities of the Indian Health Service on the Crow Creek Indian Reservation at the time of the determination.

(3) WATER SYSTEM.—The plan shall provide for the construction, operation, and maintenance of a

municipal, rural, and industrial water system for the Crow Creek Indian Reservation.

(4) RECREATIONAL FACILITIES.—The plan shall provide for recreational facilities suitable for high-density recreation at Lake Sharpe at Big Bend Dam and at other locations on the Crow Creek Indian Reservation in South Dakota.

(5) OTHER PROJECTS AND PROGRAMS.—The plan shall provide for such other projects and programs for the educational, social welfare, economic development, and cultural preservation of the Tribe as the Tribe considers to be appropriate.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act, including such funds as may be necessary to cover the administrative expenses of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund established under section 4.

SEC. 7. EFFECT OF PAYMENTS TO TRIBE.

(a) IN GENERAL.—No payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law——

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(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

(b) EXEMPTIONS; STATUTORY CONSTRUCTION.—

(1) POWER RATES.—No payment made pursuant to this Act shall affect Pick-Sloan Missouri River basin power rates.

(2) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed as diminishing or affecting—

(A) any right of the Tribe that is not otherwise addressed in this Act; or

(B) any treaty obligation of the United States.

Amend the title so as to read: "A bill to provide for certain benefits of the Pick-Sloan Missouri River basin program to the Crow Creek Sioux Tribe, and for other purposes.".

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ISBN 0-16-053430-5